

INTRODUCTION

In 1991, the Board of Directors of the International Swap Dealers Association, Inc. (“ISDA”), authorized a project to revise the 1987 Interest Rate and Currency Exchange Agreement (the “1987 Agreement”) and related ISDA standard documentation. This project resulted in the publication of two versions of the 1992 ISDA Master Agreement (the “1992 Agreements”), specifically a multicurrency — cross border version and a local currency— single jurisdiction version, and several product-specific definitional booklets and forms of confirmations. In revising the 1987 Agreement, the main objectives were to (i) expand the ISDA documentation architecture to facilitate inclusion of derivative products in addition to those products originally contemplated by earlier generations of ISDA documentation and thereby promote the benefits of cross-product netting, (ii) address legal developments since 1987 (*e.g.*, 1990 amendments to the U.S. Bankruptcy Code) and (iii) incorporate modifications and clarifications deemed important based on experience gained since 1987 and form a consensus of the ISDA membership on such modifications and clarifications.

This User’s Guide is designed to explain the 1992 Agreements and to highlight significant changes from the 1987 Agreement. The User’s Guide also identifies and discusses certain issues that merit additional consideration by market participants. Section I of the User’s Guide focuses on architecture and particularly on the broad product coverage contemplated by the 1992 ISDA documentation. Section II provides a section-by-section guide to the 1992 Agreements. Section III discusses what can be done if parties enter into a confirmation with respect to a particular derivative transaction prior to execution of a 1992 Agreement. Section IV explains the tax provisions in the multicurrency — cross border version of the 1992 Agreements. Section V discusses set-off and presents standard set-off clauses for consideration by market participants. Section VI discusses the modifications to the 1987 Agreement designed to permit the documentation of transactions that settle by physical delivery and also discusses further modifications to the 1992 Agreements that market participants may find desirable in connection with the documentation of such transactions. Sections VII and VIII discuss issues relating to severability and impossibility, respectively. Section IX considers the changing operational technologies in the marketplace and discusses certain issues concerning recorded conversations and electronic messaging systems. Section X discusses certain matters relating to netting-by-novation. Sections XI and XII review certain issues relevant to documentation under the laws of the United States and the State of New York and of England, respectively. The publication date of this User’s Guide is January 19, 1993.

THIS USER’S GUIDE DOES NOT PURPORT AND SHOULD NOT BE CONSIDERED TO BE A GUIDE TO OR EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN A PARTICULAR TRANSACTION OR CONTRACTUAL RELATIONSHIP. PARTIES SHOULD THEREFORE CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING ANY ISDA STANDARD DOCUMENTATION. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR ANY DEFINITION OR PROVISION CONTAINED THEREIN MAY BE PUT.

Capitalized terms used in this User's Guide and not defined have the meanings given such terms in the 1992 Agreements unless otherwise indicated. Unless otherwise indicated, Section references in this User's Guide are to the 1992 Agreements and relate to both versions of the 1992 Agreements. Where the section reference to a specific provision of the multicurrency—cross border version of the 1992 Agreements differs from the comparable section of the local currency—single jurisdiction version of the 1992 Agreements, or where a comparable section is not included in such version, appropriate indications have been made.

Copies of any of the published ISDA standard documentation may be obtained from the executive offices of ISDA as may copies of the 1992 Agreements marked to show all changes from the 1987 Agreement.

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