

INTRODUCTION

In 1999, the International Swaps and Derivatives Association, Inc. (“ISDA”), initiated a strategic documentation review (the “Strategic Documentation Review” or “SDR”) of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) (the “1992 Agreement”) and the ISDA Credit Support Documents. Three ISDA working groups were formed to address specific areas of the 1992 Agreement. One group addressed the termination, valuation and close-out provisions of the 1992 Agreement. Another group addressed the proposal to prepare standard force majeure and impossibility provisions for inclusion in a 1992 Agreement. The third group addressed certain structural issues, including consideration of how to make use of the 1992 Agreement to achieve cross-product netting, ultimately resulting in ISDA’s publication of the 2001 ISDA Cross-Agreement Bridge. A fourth working group focused on the Credit Support Documents, resulting in the publication of the 2001 ISDA Margin Provisions and User’s Guide.

The SDR and the subsequent development of a new Master Agreement (the “2002 Agreement”) grew out of member experiences during periods of market turmoil in the late 1990s, including the Asian currency crises, the Russian debt default and issues surrounding Long-Term Capital Management. The operation of several key provisions of the 1992 Agreement, particularly Sections 5 and 6, needed to be adjusted to reflect the lessons learned from those experiences and to incorporate some of the changes that occurred in market practice after 1992. In revising the 1992 Agreement, the main objectives were to incorporate modifications and clarifications deemed important based on experience gained since 1992 and to form a consensus of the ISDA membership on such modifications and clarifications.

This User’s Guide is designed to explain the 2002 Agreement and to highlight significant changes from the 1992 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 the architecture of and the product coverage contemplated by the 2002 Agreement. Section II provides a section-by-section guide to the 2002 Agreement. 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 2002 Agreement. Section IV explains the tax provisions and related tax considerations with respect to the 2002 Agreement. Section V discusses adequate assurances. Section VI sets forth a model guarantee and assignment provision, which expands the set-off provision in the 2002 Agreement. Section VII describes the Global Documentation Steering Committee’s efforts to harmonise documentation approaches across industry master agreements. Section VIII offers additional modifications to the 2002 Agreement relating to physically-settled transactions. Lastly, Section IX discusses Financial products Markup Language and its implications for the 2002 Agreement. The publication date of this User’s Guide is July 23, 2003.

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