

## **INTRODUCTION TO THE 2005 ISDA COMMODITY DEFINITIONS**

The 2005 ISDA Commodity Definitions (these "Commodity Definitions"), which include the Exhibits to the 2005 ISDA Commodity Definitions (the "Exhibits") and the Annex to the 2005 ISDA Commodity Definitions (the "Annex"), and are intended for use with the ISDA Master Agreements published by the International Swaps and Derivatives Association, Inc. ("ISDA") in 2003 (the "2002 ISDA Master Agreement") and 1992 (the "1992 ISDA Master Agreement") (each an "ISDA Master Agreement"), respectively, or other agreements, and to be incorporated in Confirmations of individual transactions governed by those agreements. Copies of the ISDA Master Agreements are available from the executive offices of ISDA and also from the ISDA web-site ([www.isda.org](http://www.isda.org)). A sample form of letter agreement constituting a Confirmation for privately negotiated commodity transactions is included in the Exhibits to the Commodity Definitions. Sample forms of specific provisions for inclusion in a Confirmation to document different types of commodity transactions are also included in the Exhibits to these Commodity Definitions.

These Commodity Definitions (including the Annex) are designed for use by participants in privately negotiated commodity transactions to document cash-settled commodity swaps, basis swaps, options, caps, collars, floors and swaptions or such other cash-settled commodity transactions and commodity index transactions as the parties desire, as well as certain physically-settled transactions. These Commodity Definitions include within the Annex additional definitions, other provisions and forms of Confirmation relevant to bullion transactions, weather index derivative transactions and freight transactions. These supplemental definitions and provisions are organized within Sub-Annexes to the Annex (each a "Sub-Annex" and collectively, the "Sub-Annexes") that form a part of and supplement these Commodity Definitions. These Commodity Definitions also include within the Annex (attached as Sub-Annexes) a number of optional versions of an additional part to the Schedule of an ISDA Master Agreement and/or relevant forms of Confirmation, each of which may be appended to an ISDA Master Agreement.

Other than within the Sub-Annexes, these Commodity Definitions do not contain generic settlement or other provisions designed to permit the documentation of transactions that settle by physical delivery of the underlying commodity. Accordingly, parties should carefully consider any necessary modifications and consult with their legal advisors before using these Commodity Definitions when documenting such a transaction.

The 1993 ISDA Commodity Derivatives Definitions (the "1993 Definitions"), as supplemented by the 2000 Supplement to the 1993 Definitions (the "2000 Supplement"), served as the basis for many of the definitions and provisions contained in these Commodity Definitions. In fulfillment of the intent of the 2000 Supplement, much of Article 7 of the 2000 Supplement has been merged into the Annex. All material from the 1993 Definitions and the 2000 Supplement has been reviewed and updated in light of the continuing evolution of ISDA terminology, including as seen in the 2000 ISDA Definitions (which include the Annex thereto), as amended and/or supplemented from time to time (the "2000 ISDA Definitions") and the 2002 ISDA Master Agreement. This review process, as well as the development of additional definitions and provisions, was carried out by working groups sponsored by ISDA. These working groups acted on the basis of market practice and studied consideration of the relevant issues. These working groups included representatives from ISDA member institutions as well as representatives from institutions that are not ISDA members, but that specialize in certain types of commodity

transactions. The material in each of the Sub-Annexes was developed by a dedicated working group prior to or contemporaneously with the preparation of these Commodity Definitions. Each of the Sub-Annexes has been integrated into the Annex to these Commodity Definitions with a view to preserving the unique mechanisms that each contains. Inevitably, in certain areas market practice has not been uniform or has otherwise not provided definitive guidance. Each working group member has, where appropriate, sought the views of his or her own trading, operational, legal, compliance and other relevant personnel. None of this research, however, obviates the need for each user of the Commodity Definitions to review the provisions of the Commodity Definitions carefully and to form its own independent judgment on whether the Commodity Definitions are appropriate for documenting any particular transaction.

The 1997 ISDA Bullion Definitions are consolidated into these Commodity Definitions through application of generic material (for example, the fundamental fixed rate and floating rate definitions) and particularized definitions in both these Commodity Definitions and, in bulk, in Sub-Annex B. As in the case of the 1997 ISDA Bullion Definitions, the material incorporated in these Commodity Definitions is designed for use by the participants in the bullion markets to document cash-settled and physically-settled bullion spot and forward trades and options, cash-settled bullion swaps, caps, collars and floors, and physically-settled swaptions. As used in these Commodity Definitions, "Bullion" means each of Gold, Silver, Platinum and Palladium.

These Commodity Definitions may be updated periodically to include additional definitions and provisions. While the definitions and provisions contained in these Commodity Definitions may be modified in any update, it is not anticipated that they will be changed substantively unless the then-prevailing market practice supports such a change. However, it is anticipated that the Commodity Reference Price definitions, certain other definitions relating to Commodity Reference Prices or weather index station definitions, for example, and the forms of Confirmation to document different types of commodity transactions may be added to or changed from time to time as transactions involving commodities not included in these Commodity Definitions become more prevalent and to reflect market practice. Accordingly, certain portions of these Commodity Definitions are set forth in the Exhibits and in the Annex and are being released in a loose-leaf format so as to accommodate such additions and changes. At any time a copy of the then-current version of these Commodity Definitions (and the Exhibits and the Annex to these Commodity Definitions) can be obtained from the executive offices of ISDA and also from the ISDA web-site.

These Commodity Definitions are intended to provide a basic framework for documenting privately negotiated commodity transactions. As with other product-specific definitions published by ISDA, however, parties using these Commodity Definitions to document privately negotiated commodity transactions may adapt or supplement the standard provisions set out in these Commodity Definitions to reflect the specific economic terms agreed between the parties to the relevant transaction.

These Commodity Definitions can be incorporated by reference into any agreement or Confirmation. (Please refer to the Introduction to the Annex for guidance (including as to version conventions) with respect to effecting such incorporation). Existing agreements or Confirmations that incorporate the 1993 Definitions, whether or not supplemented by the 2000 Supplement, or the 1997 ISDA Bullion Definitions, will not, without further action by the parties, be affected by the use of these Commodity Definitions for transactions.

ISDA has provided these Commodity Definitions to assist the smooth and efficient functioning of privately negotiated commodity transactions by providing a common set of terms for parties to use in

preparing agreements and Confirmations. *The precise documentation of each individual transaction remains, however, the responsibility of the parties concerned. ISDA assumes no responsibility for any use to which these Commodity Definitions may be put, including, without limitation, any use of these Commodity Definitions in connection with any privately negotiated commodity transactions. Each party to a transaction evidenced by an agreement or a Confirmation referring to or incorporating these Commodity Definitions must satisfy itself that these Commodity Definitions are appropriate for the transaction, have been properly used and/or adapted in the agreement or Confirmation for the transaction and that the agreement or Confirmation has generally been properly drafted, in each case to reflect the commercial intentions of the parties.*

ISDA has no relationship with, is not affiliated with and has not received compensation from the organizations that have created or publish or provide the information that serves as a basis for the prices referred to in these Commodity Definitions. ISDA does not assume any responsibility for the non-availability or miscalculation of, or any error or omission in, any of the prices referred to in these Commodity Definitions. ISDA assumes no responsibility for any use to which these Commodity Definitions may be put or for any use of any price in connection with a commodity transaction.

With respect to the treatment of Bullion Transactions and related provisions, both the London Bullion Market Association and the Financial Markets Lawyers Group have endorsed Sub-Annex B, relating to bullion transactions.

ISDA has not undertaken to review all applicable laws and regulations of any jurisdiction in which these Commodity Definitions may be used, and therefore parties are advised to consider the application of any relevant jurisdiction's regulatory, tax, accounting, commodity exchange or other requirements that may exist in connection with the entering into and documenting of a commodity transaction.