

Additional Provisions for Physically Settled Default
Swaps – Monoline Insurer as Reference Entity¹
(published on May 9, 2003)

Additional Provisions

- (a) **Qualifying Policy.** “Qualifying Policy” means a financial guaranty insurance policy or similar financial guarantee pursuant to which a Reference Entity irrevocably guarantees or insures all Instrument Payments (as defined below) of an instrument that constitutes Borrowed Money (modified as set forth below) (the “Insured Instrument”) for which another party (including a special purpose entity or trust) is the obligor (the “Insured Obligor”). Qualifying Policies shall exclude any arrangement (i) structured as a surety bond, letter of credit or equivalent legal arrangement or (ii) pursuant to the express contractual terms of which the payment obligations of the Reference Entity can be discharged or reduced as a result of the occurrence or non-occurrence of an event or circumstance (other than the payment of Instrument Payments). The benefit of a Qualifying Policy must be capable of being Delivered together with the Delivery of the Insured Instrument.

“Instrument Payments” means (A) in the case of any Insured Instrument that is in the form of a pass-through certificate or similar funded beneficial interest, (x) the specified periodic distributions in respect of interest or other return on the Certificate Balance on or prior to the ultimate distribution of the Certificate Balance and (y) the ultimate distribution of the Certificate Balance on or prior to a specified date and (B) in the case of any other Insured Instrument, the scheduled payments of principal and interest, in the case of both (A) and (B) (1) determined without regard to limited recourse or reduction provisions of the type described in paragraph (d) below and (2) excluding sums in respect of default interest, indemnities, tax gross-ups, make-whole amounts, early redemption premiums and other similar amounts (whether or not guaranteed or insured by the Qualifying Policy).

“Certificate Balance” means, in the case of an Insured Instrument that is in the form of a pass-through certificate or similar funded beneficial interest, the unit

¹ The “Additional Provisions for Physically Settled Default Swaps – Monoline Insurer as Reference Entity”, published on May 9, 2003, (“Additional Provisions”) may be added to a credit default swap confirmation as a new paragraph to the relevant confirmation (immediately following “Settlement Terms”). Alternatively, the Additional Provisions may be incorporated into a relevant confirmation (including in electronic form) by wording in the document indicating that the Additional Provisions, published on May 9, 2003, are so incorporated by reference thereto.

The Additional Provisions are intended for physically-settled credit default swap transactions where (i) the Reference Entity is a monoline insurance company issuing financial guaranty insurance policies or similar financial guarantees, (ii) Borrowed Money (or a subset), as modified by the Additional Provisions, is selected as the Obligation Category, (iii) Bond or Loan (or a subset), as modified by the Additional Provisions, is selected as the Deliverable Obligation Category, and (iv) the Credit Events are Failure to Pay and Bankruptcy.

principal balance, certificate balance or similar measure of unreimbursed principal investment.

- (b) **Obligation and Deliverable Obligation.** Sections 2.14(a) and 2.15(a) are hereby amended by adding “or Qualifying Policy” after “or as provider of a Qualifying Affiliate Guarantee”.
- (c) **Interpretation of Provisions.** In the event that an Obligation or a Deliverable Obligation is a Qualifying Policy, the terms of Section 2.21(d) will apply, with references to the Qualifying Guarantee, the Underlying Obligation and the Underlying Obligor deemed to include the Qualifying Policy, the Insured Instrument and the Insured Obligor, respectively, except that:
 - (i) the Obligation Category Borrowed Money and the Obligation Category and Deliverable Obligation Category Bond shall be deemed to include distributions payable under an Insured Instrument in the form of a pass-through certificate or similar funded beneficial interest, the Deliverable Obligation Category Bond shall be deemed to include such an Insured Instrument, and the terms “obligation” and “obligor” as used in the 2003 ISDA Credit Derivatives Definitions in respect of such an Insured Instrument shall be construed accordingly;
 - (ii) references in the definitions of Assignable Loan and Consent Required Loan to the guarantor and guaranteeing shall be deemed to include the insurer and insuring, respectively;
 - (iii) neither the Qualifying Policy nor the Insured Instrument must satisfy on the relevant date the Deliverable Obligation Characteristic of Accelerated or Matured, whether or not that characteristic is otherwise specified as applicable in this Confirmation;
 - (iv) if the Assignable Loan, Consent Required Loan, Direct Loan Participation or Transferable Deliverable Obligation Characteristics are specified in this Confirmation and if the benefit of the Qualifying Policy is not transferred as part of any transfer of the Insured Instrument, the Qualifying Policy must be transferable at least to the same extent as the Insured Instrument; and
 - (v) with respect to an Insured Instrument in the form of a pass-through certificate or similar funded beneficial interest, the term “outstanding principal balance” shall mean the outstanding Certificate Balance and “maturity”, as such term is used in the Maximum Maturity Deliverable Obligation Characteristic, shall mean the specified date by which the Qualifying Policy guarantees or insures, as applicable, that the ultimate distribution of the Certificate Balance will occur.
- (d) **Not Contingent.** An Insured Instrument will not be regarded as failing to satisfy the Not Contingent Deliverable Obligation Characteristic solely because such Insured Instrument is subject to provisions limiting recourse in respect of such

Insured Instrument to the proceeds of specified assets (including proceeds subject to a priority of payments) or reducing the amount of any Instrument Payments owing under such Insured Instrument, provided that such provisions are not applicable to the Qualifying Policy by the terms thereof and the Qualifying Policy continues to guarantee or insure, as applicable, the Instrument Payments that would have been required to be made absent any such limitation or reduction.²

- (e) **Deliver.** For purposes of Section 8.2, “Deliver” with respect to an obligation that is a Qualifying Policy means to Deliver both the Insured Instrument and the benefit of the Qualifying Policy (or a custodial receipt issued by an internationally recognized custodian representing an interest in such an Insured Instrument and the related Qualifying Policy), and “Delivery” and “Delivered” will be construed accordingly.
- (f) **Provisions for Determining a Successor.** Section 2.2(c) is hereby amended by adding “or insurer” after “or guarantor”.
- (g) **Substitute Reference Obligation.** Section 2.30 is hereby amended by adding “or Qualifying Policy” after “or as provider of a Qualifying Affiliate Guarantee” in the definition of Substitute Reference Obligation and paragraph (b) thereof. For purposes of Section 2.30(a)(ii)(B) and Section 1.14(b)(ii), references to the Qualifying Guarantee and the Underlying Obligation shall be deemed to include the Qualifying Policy and the Insured Instrument, respectively.
- (h) **Other Provisions.** For purposes of Sections 2.15(a)(ii), 4.1, 8.2, 9.1 and 9.2(a) as well as Section 3(a)(iv) of the Novation Agreement, references to the Underlying Obligation and the Underlying Obligor shall be deemed to include Insured Instruments and the Insured Obligor, respectively. Any transfer or similar fee reasonably incurred by Buyer in connection with the Delivery of a Qualifying Policy and payable to the Reference Entity shall be payable by Buyer and Seller equally on the Delivery Date or Latest Permissible Physical Settlement Date, as applicable.

² By incorporating this provision in a document, no inference should be made as to the interpretation of the “Not Contingent” Deliverable Obligation Characteristic in the context of limited recourse or similar terms applicable to Deliverable Obligations other than Qualifying Policies.