

COMMENTARY ON RESTRUCTURING SUPPLEMENT

This note will explain the provisions set forth in the [Restructuring Supplement to the 1999 ISDA® Credit Derivatives Definitions](#) dated May 11, 2001 (the "Supplement").

1. General Considerations. The Supplement is structured as a supplement or addendum to the 1999 ISDA Credit Derivatives Definitions (the "Definitions") and can be incorporated in a Confirmation by adding the language set forth in the attached confirmation excerpt. Parties may incorporate parts of the Restructuring Supplement by indicating in a Confirmation the specific sections of the Supplement which the parties intend to incorporate, or may exclude the application of certain sections by incorporating the Supplement with language indicating which sections are not to be included. Parties should consult with their advisers as to the advisability of including the Supplement in any particular Credit Derivative Transaction. In particular, parties should carefully consider whether the provisions in the Supplement are appropriate for Credit Derivative Transactions involving a Sovereign Reference Entity.
2. Restructuring Maturity Limitation. The Supplement adds a new Section 2.29 called "Restructuring Maturity Limitation". The Restructuring Maturity Limitation is intended only for physically settled transactions and is applicable only if "Restructuring Maturity Limitation Applicable" is specified in a Confirmation, as indicated in the attached Confirmation excerpt, and the Buyer has triggered the Restructuring Credit Event. If the Seller triggers a Restructuring Credit Event, the Buyer may deliver any Deliverable Obligation.

Where applicable, Section 2.29 provides that the Buyer may deliver only a Deliverable Obligation that has a final maturity date not later than the Restructuring Maturity Limitation Date. This provision uses the defined term "Restructured Bond or Loan", which is defined as any Obligation that has been the subject of a Restructuring. Parties should consider whether it is appropriate to use the Restructuring Maturity Limitation in Credit Derivative Transactions in which the Deliverable Obligation Category is a category other than a Bond or Loan.

In addition, the Deliverable Obligation must be a Fully Transferable Obligation. This requirement is in addition to any Deliverable Obligation Characteristics specified by the parties, so that, for example, even if Consent Required Loans could be delivered if the Credit Event were other than a Restructuring, they could not be delivered if the relevant Credit Event were a Restructuring. Where applicable, the provision effectively overrides any Maximum Maturity Deliverable Obligation Characteristic the parties may have otherwise specified.

Restructuring Maturity Limitation Date. The Restructuring Maturity Limitation Date is defined by reference to the Restructuring Date, which is defined as the date that the Restructuring of an Obligation is legally effective in accordance with the terms of the documentation governing such Restructuring (i.e., after the satisfaction of all

conditions to the effectiveness of the Restructuring). The Restructuring Maturity Limitation Date is a date that is the earlier of (x) 30 months after the Restructuring Date and (y) the latest final maturity date of any Restructured Bond or Loan, subject to the following:

1. the Restructuring Maturity Limitation Date cannot be any earlier than the Scheduled Termination Date of the Credit Derivative Transaction; and
2. the Restructuring Maturity Limitation Date cannot be any later than the date that is 30 months following the Scheduled Termination Date.

In some Restructurings, the values of the obligations of a Reference Entity may be widely divergent depending on the maturity of the obligations. The effect of the Restructuring Maturity Limitation provision is to limit the maturities of Deliverable Obligations to a maturity range that does not extend for a significant period of time beyond the Term of the Credit Derivative Transaction. In this way, Buyers retain the maturity protection they originally bargained for, as the Restructuring Maturity Limitation Date can not be earlier than the Scheduled Termination Date. Furthermore, where the Restructuring occurs late in the Term of the Credit Derivative Transaction, the Buyer is able to deliver Deliverable Obligations with maturities later than the Scheduled Termination Date as long as the maturity date is not later than the Restructuring Maturity Limitation Date. Sellers, on the other hand, reduce their exposure to the so-called “cheapest to deliver” option that can arise when the obligations of a Reference Entity have many different maturities and, hence, different values. There is an expectation that Deliverable Obligations that satisfy the Restructuring Maturity Limitation will have values that are not as widely divergent as may occur when the Deliverable Obligations have substantially different maturities. The effect in any particular Restructuring will, of course, depend on the specific circumstances and obligations involved.

Fully Transferable Obligation. A Deliverable Obligation is considered to be a Fully Transferable Obligation if it is "Transferable"¹, in the case of Bonds, or “capable of being assigned or novated to all Eligible Transferees without the consent of any person being required,” in the case of any Deliverable Obligation other than Bonds. The term Eligible Transferee is intended to describe a broad category of credit derivatives market participants. The Deliverable Obligation must be assignable, pursuant to the terms of the Deliverable Obligation, to each of the categories of persons described in the definition of Eligible Transferee. The terms of the Deliverable Obligation need not specifically refer to the definition of Eligible Transferee so long as it can be determined that the Deliverable Obligation could be assigned to each category of Eligible Transferee. For example, if the Deliverable Obligation were to permit assignment of the Deliverable Obligation without the consent of any person in connection with the settlement of a credit derivative

¹ “Transferable” is a term that is defined in Section 2.19(b)(v) of the 1999 Credit Derivatives Definitions and is a term applicable only to obligations that are not Loans.

transaction, such a Deliverable Obligation would be considered a Fully Transferable Obligation as defined.

Whether an obligation is a Fully Transferable Obligation is determined without regard to any legal restrictions that are independent of the terms of the Deliverable Obligation (e.g., banking regulations that prohibit certain types of entities from holding loans). Such restrictions may, in fact, prevent the Deliverable Obligation from being assigned to a person or group of persons included in the definition of Eligible Transferee in connection with the settlement of the Credit Derivative Transaction. The Deliverable Obligation will nevertheless be considered a Fully Transferable Obligation for the purpose of Section 2.29 as long as the terms of the Deliverable Obligation permit transfer to an Eligible Transferee.

3. Limitation on Obligations in Connection with Restructuring. The Supplement adds a new Section 4.10 (Limitation on Obligations in Connection with Section 4.7). New Section 4.10 is intended to exclude restructurings in connection with so-called bilateral loans from the Restructuring Credit Event. This provision requires that in order for the restructuring of an Obligation to trigger the Restructuring Credit Event, there must be more than three holders of the Obligation and the Obligation must require a super majority (at least 66 2/3%) to consent to the event which would otherwise constitute a Restructuring. The determination of the super majority requirement is to be made pursuant to the terms of the Obligation so that if the test is by principal amount, that would be the test for purposes of this provision. It is important to note that new Section 4.10 does not affect the deliverability of a bilateral loan; it is still capable of being delivered (assuming it meets the definition of "Deliverable Obligation" and, if applicable, the Restructuring Maturity Limitation provisions of Section 2.29) even though its restructuring can not trigger a Restructuring Credit Event.
4. Pari Passu Ranking. The Supplement adds a new Section 2.30 (Pari Passu Ranking; Section 4.7(a)(iv)), in order to deal with issues that have arisen in connection with subordination of Obligations in the context of a Restructuring. Section 2.30(a) provides that any Reference Obligation will have its seniority determined as of the Trade Date or the date on which the Obligation was issued, without regard to any subsequent changes in seniority. This is intended to change the rule set forth in the current definition of "Pari Passu Ranking", which provides that any obligation that is pari passu with the Reference Obligation is deliverable, even if such obligation has been subordinated.²

² As a result of the application of this provision, the following types of obligations would not be considered to satisfy the Pari Passu Ranking Deliverable Obligation Characteristic:

- Obligations that were subordinated to the Reference Obligation at the Trade Date (or the date the Reference Obligation is issued) even if they become of equal ranking with the Reference Obligation in connection with the subordination of the Reference Obligation; and
- Obligations (other than the Reference Obligation, however specified) that are made subordinate at the same time the Reference Obligation is made subordinate.

Section 2.30(b) clarifies the question of so-called structural subordination. New Section 2.30(b) requires that in order for subordination to constitute a Credit Event under Section 4.7(a)(iv), the subordination must be explicit and contractual. Mere structural subordination, such as that experienced by a senior debt holder whose obligation is not entitled to the benefit of collateral that is given to other senior debt holders, does not constitute subordination for purposes of the Restructuring Credit Event.

5. Credit Event Notice After Restructuring. The Definitions provide that if a Credit Event occurs, only one Credit Event Notice may be delivered by the Notifying Party. Once the Credit Event Notice is delivered, the Buyer can choose to settle only part of the Credit Derivative Transaction, but the credit protection it has purchased terminates with respect to the unsettled portion .

Section 3.10 in the Supplement changes this provision of the Definitions in cases when a Restructuring occurs. In those cases, Section 3.10 permits a Notifying Party to deliver a Credit Event Notice with respect to less than all of the Floating Rate Payer Calculation Amount (subject to a minimum amount) and to deliver more than one Credit Event Notice. If a Credit Event Notice is delivered with respect to less than all the outstanding Floating Rate Payer Calculation Amount, Section 3.10(b) provides that the rights and obligations of the parties will be construed as if they had entered into two Credit Derivative Transactions with Floating Rate Payer Calculation Amounts that, together, equal the Floating Rate Payer Calculation Amount of the Credit Derivative Transaction in existence at the time of such Credit Event Notice. One of these transactions is in an amount equal to the Exercise Amount, and this transaction, upon satisfaction of the applicable Conditions to Payment, will be settled in accordance with the applicable Settlement Method. The other transaction continues in effect with a Floating Rate Payer Calculation Amount equal to the Floating Rate Payer Calculation Amount at the time of such Credit Event Notice minus the Exercise Amount. Subsequent deliveries of Credit Event Notices that are in an amount less than the then outstanding Floating Rate Payer Calculation Amount would have the same effect.

Where the Credit Event Notice relates to a Credit Event other than Restructuring (e.g., where a Bankruptcy Credit Event occurs subsequent to a Restructuring), the general rule of the Definitions that only one Credit Event Notice may be delivered would apply. Accordingly, Section 3.10(c) provides that the Exercise Amount in connection with a Credit Event Notice describing a Credit Event other than a Restructuring must be equal to the then outstanding Floating Rate Payer Calculation Amount (and not a portion thereof).

Attachment to
Commentary on Restructuring
Supplement to 1999 ISDA
Credit Derivatives Definitions

1. Confirmation Introduction: In order to incorporate the Restructuring Supplement into a Credit Derivative Transaction, the following paragraph may be included in the confirmation of such Credit Derivative Transaction in place of the second paragraph of the EXHIBIT to the 1999 Credit Derivatives Definitions:

The definitions and provisions contained in the 1999 ISDA Credit Derivatives Definitions, as supplemented by the Restructuring Supplement dated May 11, 2001 (the "Credit Derivatives Definitions"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Credit Derivatives Definitions and this Confirmation, this Confirmation will govern.

2. In order to apply the Restructuring Maturity Limitation to a Credit Derivative Transaction into which the Restructuring Supplement has been incorporated, the section of the confirmation of such Credit Derivative Transaction that describes the Deliverable Obligations should state that the Restructuring Maturity Limitation is applicable. The following is an example of such section:

Deliverable Obligations:

Deliverable Obligation Category: <i>(Select only one)</i>	Bond or Loan
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Deliverable Obligation Characteristics for Bonds:	Pari Passu Ranking Specified Currency: [Standard Specified Currencies] Not Contingent Transferable Maximum Maturity: [] years Not Bearer
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Deliverable Obligation Characteristics for Loans:	Pari Passu Ranking Specified Currency: Standard Specified Currencies Not Contingent Maximum Maturity: [] years Assignable Loan Consent Required Loan
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Restructuring Maturity Limitation Applicable