

ISDA 2019 German Bank CDS Protocol

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Change in German Bank Law

- In 2015, Germany made all senior bank debt subject to loss absorption (equivalent of senior non-preferred in other jurisdictions)
- From July 21, 2018, change in German law allowed banks to issue senior preferred and senior non-preferred debt
- As a result, debt that was issued either (a) prior to July 21st as a senior debt obligation or (b) on or after July 21st as a senior non-preferred debt obligation are both at the same level of seniority, senior non-preferred

2018 EMEA Credit Derivatives Determinations Committee Decisions in relation to CDS transactions referencing a German bank Reference Entity

- On 14 September 2018, the EMEA DC published a statement that, subject to the detail in that statement, it had determined that all legacy senior CDS transactions referencing a German bank Reference Entity, which do not specify whether they are senior preferred or senior non-preferred CDS transactions, will be treated as senior non-preferred CDS transactions
- On 19 September 2018, the DC also clarified the treatment of new senior 2014 Transactions referencing a German bank Reference Entity

Documentation Changes

- On November 26, 2018, the ISDA Credit Steering Committee (CSC) published a statement detailing new documentation practices to allow for the trading of CDS on German bank debt at both the senior preferred and senior non-preferred level
- To ensure legacy trades were fungible with new trades, ISDA published the ISDA 2019 German Bank CDS Protocol
- The Clearing Houses (ICE and LCH) will switch over all trades on the applicable German banks, but such switch is dependent on the market adopting the Protocol

Additional Provisions for Senior Non-Preferred Reference Obligations

- The Additional Provisions for Senior Non-Preferred Reference Obligations were published by ISDA on 8 December 2017
- The Additional Provisions set the Seniority Level at the Senior Non-Preferred Level such that the SRO will be the Senior Non-Preferred SRO.
- A Senior Non-Preferred Obligation is Subordinated to unsubordinated Borrowed Money and ranks above Tier 2 Subordinated Obligations.
- This means that the Not Subordinated Deliverable Obligation Characteristic will be tested by reference to Senior Non-Preferred debt.

German Bank CDS Protocol

- The Protocol only applies to the transaction if the Covered Entity Terms Requirement is met:
 - Incorporates 2014 Definitions
 - Specifies either the “Standard European Financial Corporate” or the “European Financial Corporate” Transaction Type
 - “Standard Reference Obligation” is specified as applicable and Seniority Level is not “Subordinated” OR a RO is specified that was: (1) issued prior to July 21, 2018 and upon issue such RO was a senior unsecured debt obligation or (2) issued on or after July 21, 2018 and upon issue such RO was a senior non-preferred debt obligation
- Does not apply if there is no RO or SRO for such transaction

German Bank CDS Protocol

- For certain German banks (listed in Schedule 3) meeting the Covered Entity Terms Requirements, changes the Transaction Type from “Standard European Financial Corporate” to “Standard European Senior Non Preferred Financial Corporate” or “European Financial Corporate” to “European Senior Non Preferred Financial Corporate”
- Applies to single name CDS and the portion of the index that references the enumerated German banks and other wise meets the Covered Entity Terms Requirements
- Changing the Transaction Type allows incorporation of the Additional Provisions for Senior Non-Preferred Reference Obligations to the transaction or portion of the index transaction

Adhering to the Protocol

- Protocol page: <https://www.isda.org/protocol/isda-2019-german-bank-cds-protocol/>
- The Protocol adherence period is from February 6th to February 27th at 5:00 pm New York time
- The Implementation Date is March 10th