



International Swaps and Derivatives Association, Inc.

ISDA EUROPEAN VARIANCE SWAP PROTOCOL

published on February 5, 2008
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published this ISDA European Variance Swap Protocol (this "**Protocol**") to enable parties to amend the terms of existing equity variance swap transactions.

Accordingly, a party that has entered into a Variance Transaction may adhere to this Protocol and be bound by its terms by completing and delivering a letter substantially in the form of Exhibit 1 to this Protocol (an "**Adherence Letter**") to ISDA, as agent, as described below.

Capitalized terms used herein and in the Annexes hereto have the meaning ascribed to them in Section 6 of this Protocol or, if not defined therein, in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**").

1. Amendments

(a) By adhering to this Protocol in the manner set forth in Section 2 below, a party (an "**Adhering Party**") that wishes to amend the terms of a Variance Transaction, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, that the terms of each Variance Transaction, if any, between it and each other Adhering Party will be amended with effect from the Implementation Date in accordance with the terms of the applicable Annexes to this Protocol.

(b) The amendments provided for in this Protocol are set forth in Annexes 1 to 3, and each Adhering Party may specify in its Adherence Letter that one or more of these Annexes are applicable.

(c) In respect of any Variance Transaction between two Adhering Parties, where at least one Adhering Party has specified that less than all the Annexes are applicable, only those amendments contained in the Annexes that both parties have specified will be applicable.

2. Adherence and Effectiveness

(a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with the first sentence of Section 5(e) below, to ISDA, as agent, of an Adherence Letter on or before February 29, 2008 or such later date designated by ISDA falling no later than July 30, 2008 (in either case, the "**Cut-off Date**"). ISDA may designate a date later than February 29, 2008 as the Cut-off Date by notice given no later than February 29, 2008 on the "ISDA European Variance Swap Protocol" section of its website at www.isda.org (or by other suitable means) if it determines in its absolute discretion that market interest justifies such an extension to the adherence period. After the Cut-off Date, ISDA will not accept any further Adherence Letters to the Protocol.

(i) Each Adhering Party will deliver two copies of the Adherence Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory.

(ii) Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by the General Counsel or an appropriate officer of ISDA will be deemed to be an original.

(b) As between any two Adhering Parties:

(i) the agreement to make the amendments contemplated by this Protocol, on the terms and subject to the conditions set forth in this Protocol, will be effective on the date of receipt by ISDA, as agent, of an Adherence Letter from the later of the Adhering Parties to adhere or, in the case of the amendments set out in Annex 3, the date of satisfaction of the Side Letter Condition, if later; and

(ii) the amendments set out in the Annexes that both of the Adhering Parties have specified as applicable will apply between the Adhering Parties from that date, subject to any conditions contained in those Annexes, but in each case with effect from the Implementation Date whether or not the relevant date determined under (i) above falls before, on or after the Implementation Date.

(c) This Protocol is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Variance Transaction that the parties may otherwise effect.

(i) In adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise.

(ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Section will be void.

3. Representations

Each Adhering Party represents to each other Adhering Party with which it has or may have entered into a Variance Transaction, on the date on which the later of them adheres in accordance with Section 2 above and, if then outstanding, in respect of each Variance Transaction between them, that:

(a) **Status.** It is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to the Governing ISDA Master Agreement, has such status;

(b) **Powers.** It has the power to execute and deliver the Adherence Letter and to perform its obligations under the Adherence Letter and the Governing ISDA Master Agreement, in each case as amended by the Adherence Letter and this Protocol, and has taken all necessary action to authorize such execution, delivery and performance;

(c) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(d) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter and the Governing ISDA Master Agreement, in each case as amended by the Adherence Letter and this Protocol, have been obtained and are in full force and effect and all conditions of any such consents have been complied with;

(e) **Obligations Binding.** Its obligations under the Adherence Letter and the Governing ISDA Master Agreement, in each case as amended by the Adherence Letter and this Protocol, constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)); and

(f) **Credit Support.** Its adherence to this Protocol and any amendment contemplated by this Protocol will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document relating to the Governing ISDA Master Agreement.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Governing ISDA Master Agreement that each of the foregoing representations will be deemed to be a representation for purposes of Section 5(a)(iv) of each such

Governing ISDA Master Agreement entered into prior to the Implementation Date between them.

4. Evidence of Capacity and Authority

Each Adhering Party may deliver to ISDA, as agent, such evidence as it deems appropriate to evidence its capacity to adhere to this Protocol and the authority of anyone signing on its behalf.

5. Miscellaneous

(a) *Entire Agreement; Restatement; Survival.*

(i) This Protocol constitutes the entire agreement and understanding of the Adhering Parties with respect to its subject matter. Each Adhering Party acknowledges that in adhering to this Protocol it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in the Annexes or elsewhere in this Protocol) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol will limit or exclude any liability of an Adhering Party for fraud.

(ii) Except for any amendment deemed to be made pursuant to this Protocol in respect of any Variance Transaction, all terms and conditions of the relevant Variance Transaction will continue in full force and effect in accordance with the provisions of its Confirmation as in effect immediately prior to the Implementation Date. This Protocol will, with respect to its subject matter, survive, and any amendments deemed to be made pursuant to it, will form a part of each relevant Variance Transaction between the Adhering Parties.

(b) ***Amendments.*** An amendment, modification or waiver in respect of the matters contemplated by this Protocol will only be effective if made in accordance with the terms of the Governing ISDA Master Agreement and then only with effect between the parties to the Governing ISDA Master Agreement (and will only be effective to amend or override the provisions contained in an Annex of this Protocol if it expressly refers in writing to this Section of this Protocol and would otherwise be effective in accordance with Section 9(b) of the Governing ISDA Master Agreement in effect between the parties).

(c) ***Headings.*** The headings used in this Protocol and any Adherence Letter are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Protocol or any Adherence Letter.

(d) ***Governing Law.*** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Variance Transaction between them, be governed

by and construed in accordance with the law specified to govern that Variance Transaction and otherwise in accordance with applicable choice of law doctrine.

(e) **Notices.** Any Adherence Letter or Revocation Notice must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at eurovarswapprotocol@isda.org and will be deemed effectively delivered on the date it is delivered unless on the date of that delivery ISDA's New York office is closed or that communication is delivered after 5:00 p.m., New York time, in which case that communication will be deemed effectively delivered on the next day ISDA's New York office is open. Each Adhering Party agrees that the determination of the date and time of delivery of any Adherence Letter shall be determined by ISDA in its absolute discretion.

6. Definitions

(a) "Confirmation" means, in relation to a Variance Transaction between two Adhering Parties, each document or other confirming evidence exchanged between the parties or otherwise effective for the purpose of confirming or evidencing the Variance Transaction and includes, where applicable, the terms of any master confirmation agreement that the Adhering Parties have agreed will govern the Variance Transaction.

(b) "Implementation Date" means February 5, 2008.

(c) "Interdealer MCA" means the document entitled "European Variance Swap Master Confirmation Agreement – Share Variance Swap & Index Variance Swap (European underlyings)" agreed between an ad hoc group of financial institutions and dated as of October 6, 2005.

(d) "ISDA March 2007 MCA" means the 2007 European Variance Swap Master Confirmation published by ISDA on March 7, 2007.

(e) "Governing ISDA Master Agreement" means, in respect of a Variance Transaction, the ISDA Master Agreement governing such Variance Transaction, whether separately entered into by the relevant Adhering Parties or incorporated by reference (either directly or under the terms of a related master confirmation agreement) in the Confirmation of the Variance Transaction.

(f) "ISDA Master Agreement" means any of the following: (i) the ISDA 2002 Master Agreement; (ii) the 1992 ISDA Master Agreement (Multicurrency – Cross Border); (iii) the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction); (iv) the 1987 ISDA Interest Rate and Currency Exchange Agreement; and (v) the 1987 ISDA Interest Rate Swap Agreement.

(g) "Long-form Confirmation" means, in relation to a Variance Transaction between two Adhering Parties, a Confirmation other than a Transaction Supplement under the Interdealer MCA, the ISDA March 2007 MCA or the ISDA Revised 2007 MCA.

(h) "ISDA Revised 2007 MCA" means the Revised 2007 European Variance Swap Master Confirmation Agreement published by ISDA on June 25, 2007.

(i) "Side Letter Condition" has the meaning given to that term in Annex 3.

(j) "Variance Transaction" means an equity index variance transaction or equity share variance transaction entered into between two Adhering Parties prior to the Implementation Date.

EXHIBIT 1
to ISDA European Variance Swap Protocol

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

Send to: eurovarswapprotocol@isda.org

Dear Sirs,

ISDA European Variance Swap Protocol - Adherence

The purpose of this letter is to confirm our adherence to the ISDA European Variance Swap Protocol as published by the International Swaps and Derivatives Association, Inc. on February 5, 2008 (the "**Protocol**"). This letter constitutes an Adherence Letter as referred to in the Protocol. The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter, which will supplement and form part of any ISDA Master Agreement entered into prior to the Implementation Date between us and each other Adhering Party.

1. Specified Terms

Each of the following Annexes will be applicable if specified below as applicable:

| | | |
|---------|-------------------------|--------------|
| Annex 1 | Interdealer MCA | [Applicable] |
| Annex 2 | ISDA March 2007 MCA | [Applicable] |
| Annex 3 | Long-form Confirmations | [Applicable] |

2. Appointment as Agent and Release

We hereby appoint ISDA as our agent for the limited purposes of the Protocol and accordingly we waive, and hereby release ISDA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol or any actions contemplated as being required by ISDA.

3. Contact Details

Our contact details for purposes of this Adherence Letter are:

Name:
Address:
Telephone:
Fax:
E-mail:

[Our contact details for purposes of Side Letter Condition negotiations are:

Name:
Address:
Telephone:
Fax:
E-mail:]¹

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]²

By:

| |
|------------|
| Name: |
| Title: |
| Signature: |

¹ Bracketed language is not necessary if Annex 3 is not applicable.

² Specify legal name of Adhering Party.

ANNEX 1
to ISDA European Variance Swap Protocol

Interdealer MCA

If an agreement in the form of the Interdealer MCA (an "**Original MCA**") is in effect between two Adhering Parties, each of whom has elected for this Annex 1 to apply, then:

- (a) the Original MCA is deemed to be amended and restated in the form of the ISDA Revised 2007 MCA (the "**New MCA**"), with any elections made in a General Terms Confirmation to the Original MCA deemed to be made in the corresponding General Terms Confirmation to the New MCA; and
- (b) each Transaction Supplement to the Original MCA relating to a Variance Transaction (an "**Original Transaction Supplement**") is deemed to be amended and restated in the form of a Transaction Supplement to the New MCA (an "**Amended Transaction Supplement**"), for which purpose the following additional amendments will apply:
 - (i) the specification made in respect of "Expected N" in the Original Transaction Supplement will be deemed to be made in respect of "N" in the Amended Transaction Supplement;
 - (ii) if a number is specified in respect of "Variance Cap" in the Original Transaction Supplement, "Variance Cap" will be deemed to be "Applicable" and such number will be deemed to be specified in respect of "Variance Cap Amount" in the Amended Transaction Supplement.

For the avoidance of doubt, if two Adhering Parties have expressly agreed a term in an Original Transaction Supplement that varies any provision of or supplements the Original MCA in relation to the relevant Variance Transaction, the New MCA will be deemed correspondingly varied or supplemented in the Amended Transaction Supplement in relation to that Variance Transaction.

ANNEX 2
to the ISDA European Variance Swap Protocol

ISDA March 2007 MCA

If an agreement in the form of the ISDA March 2007 MCA (an "**Original MCA**") is in effect between two Adhering Parties, each of whom has elected for this Annex 2 to apply, then:

- (a) the Original MCA is deemed to be amended and restated in the form of the ISDA Revised 2007 MCA (the "**New MCA**"), with any elections made in a General Terms Confirmation to the Original MCA deemed to be made in the corresponding General Terms Confirmation to the New MCA; and
- (b) each Transaction Supplement to the Original MCA relating to a Variance Transaction (an "**Original Transaction Supplement**") is deemed to be amended and restated in the form of a Transaction Supplement to the New MCA (an "**Amended Transaction Supplement**").

For the avoidance of doubt, if two Adhering Parties have expressly agreed a term in an Original Transaction Supplement that varies any provision of or supplements the Original MCA in relation to the relevant Variance Transaction, the New MCA will be deemed correspondingly varied or supplemented in the Amended Transaction Supplement in relation to that Variance Transaction.

ANNEX 3
to the ISDA European Variance Swap Protocol

Long-form Confirmations

If a Variance Transaction confirmed or evidenced by a Long-form Confirmation is in effect between two Adhering Parties, each of whom has elected for this Annex 3 to apply, then:

(a) unless an agreement in the form of the ISDA Revised 2007 MCA is already in effect between the parties prior to the Implementation Date, an agreement in that form is deemed to come into effect between the parties on the Implementation Date, with Annex IVS (Index Variance Swap) and Annex SVS (Share Variance Swap) deemed to be specified as effective as of the Implementation Date in Exhibit I to such agreement; and

(b) the Long-form Confirmation is deemed to be amended and restated in the form of a Transaction Supplement (an "**Amended Transaction Supplement**") to the agreement between the Adhering Parties in the form of the ISDA Revised 2007 MCA, whether already in place or arising under clause (a) above (in either case, the "**New MCA**"), subject to satisfaction of the Side Letter Condition in relation to each such Variance Transaction.

For purposes of this Annex 3, the "**Side Letter Condition**" is the condition precedent that two Adhering Parties have, in relation to one or more Variance Transactions between them each of which is evidenced by a Long-form Confirmation, entered into a side agreement, substantially in the form attached to this Annex 3 as Exhibit A referring to this Protocol, (1) identifying each Variance Transaction to be covered by the side agreement and therefore this Annex 3 of this Protocol, (2) specifying how each field of the Amended Transaction Supplement is to be deemed completed in relation to each such Variance Transaction, and (3) specifying in relation to each such Variance Transaction any variation of or supplement to the terms of the New MCA in relation to such Variance Transaction.

EXHIBIT A TO ANNEX 3 TO
ISDA EUROPEAN VARIANCE SWAP PROTOCOL

**Side Agreement in relation to the ISDA European Variance Swap Protocol,
published by ISDA on February 5, 2008**

[Date]

We refer to the ISDA European Variance Swap Protocol (the "**Variance Protocol**") published on February 5, 2008 by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). This letter constitutes a side agreement for the purpose of satisfying the Side Letter Condition set out in Annex 3 to the Variance Protocol. Capitalized terms used but not defined in this letter have the meanings given to those terms in the Variance Protocol.

By virtue of our mutual adherence to the Variance Protocol and election of Annex 3 to apply, we have agreed that Variance Transactions entered into between us prior to the Implementation Date that were originally confirmed or evidenced by Long-form Confirmations shall be amended and restated as Transaction Supplements to the Revised 2007 European Variance Swap Master Confirmation Agreement between us (the "**ISDA Revised 2007 MCA**").

For the foregoing purpose, in the Schedule to this letter we list each of the Variance Transactions covered by this letter (and therefore by Annex 3 to the Variance Protocol) and specify how each of the fields of the Amended Transaction Supplement confirming or evidencing each Variance Transaction shall be deemed to be completed, together with any variations or supplements to the standard terms of the ISDA Revised 2007 MCA in relation to each such Variance Transaction. For the avoidance of doubt, in the event of any inconsistency between any Long-form Confirmation and the Amended Transaction Supplement for such Variance Transaction arising under Annex 3 of the Variance Protocol as completed by this letter, the Amended Transaction Supplement shall prevail.

This letter shall be governed by the law governing the ISDA Revised 2007 MCA between the parties.

| | | |
|--------------|--|--------------|
| | | |
| [PARTY A] | | [PARTY B] |
| By: Name: | | By: Name: |

SCHEDULE TO SIDE AGREEMENT

Part 1: Equity index variance transactions

1. Direct field mappings

| Variance Transaction <i>[insert type of identifier]</i> ¹ | Trade Date | Observation Start Date | Index | Exchange(s) | Related Exchange | Variance Buyer | Variance Seller | Initial Index Level | Closing Index Level | Expiring Contract Level | Variance Amount |
|---|------------|------------------------|-------|-------------|------------------|----------------|-----------------|---------------------|---------------------|-------------------------|-----------------|
| | | | | | | | | | | | |
| | | | | | | | | | | | |

| Variance Transaction <i>[insert type of identifier]</i> | Volatility Strike Price | Variance Strike Price | Valuation Date | N | Variance Cap | Variance Cap Amount | Futures Price Valuation | Exchange-traded Contract | Settlement Currency | Cash Settlement Payment Date | Multiple Exchange Index Annex |
|--|-------------------------|-----------------------|----------------|---|--------------|---------------------|-------------------------|--------------------------|---------------------|------------------------------|-------------------------------|
| | | | | | | | | | | | |
| | | | | | | | | | | | |

2. Variations and supplemental terms and elections to the ISDA Revised 2007 MCA in relation to individual Variance Transactions

| Variance Transaction <i>[insert type of identifier]</i> | Variations and supplemental terms and elections |
|--|---|
| | |
| | |

¹ Parties should select a means of identifying Variance Transactions that will ensure each Variance Transaction can be uniquely identified, such as a trade ID number issued by one of the parties

Part 2: Equity share variance transactions

1. Direct field mappings

| Variance Transaction [insert type of identifier] | Trade Date | Observation Start Date | Shares | Exchange | Related Exchange | Variance Buyer | Variance Seller | Initial Share Price | Closing Share Price |
|---|------------|------------------------|--------|----------|------------------|----------------|-----------------|---------------------|---------------------|
| | | | | | | | | | |
| | | | | | | | | | |

| Variance Transaction [insert type of identifier] | Variance Amount | Volatility Strike Price | Variance Strike Price | Valuation Date | N | Variance Cap Amount | All Dividends | Settlement Currency | Cash Settlement Payment Date |
|---|-----------------|-------------------------|-----------------------|----------------|---|---------------------|---------------|---------------------|------------------------------|
| | | | | | | | | | |
| | | | | | | | | | |

2. Variations and supplemental terms and elections to the ISDA Revised 2007 MCA in relation to individual Variance Transactions

| Variance Transaction [insert type of identifier] | Variations and supplemental terms and elections |
|---|---|
| | |
| | |