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ISDA 2014 Collateral Agreement Negative Interest Protocol - Webinar

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Michael Clarke, Goldman Sachs
Ilene K. Froom, Jones Day
Yani Martes, ISDA

The Negative Interest Rate Protocol

- What is a Protocol Covered Collateral Agreement?
 - The Protocol amends a Protocol Covered Collateral Agreement between Adhering Parties*, which, is any of (i) a 1994 ISDA Credit Support Annex (Security Interest - New York Law), (ii) a 1995 ISDA Credit Support Annex (Transfer - English Law), (iii) a 1995 ISDA Credit Support Deed (Security Interest - English Law), (iv) a 1995 ISDA Credit Support Annex (Security Interest - Japanese Law), (v) a 2008 ISDA Credit Support Annex (Loan/Japanese Pledge) or (vi) a 2001 ISDA Margin Provisions (any of the foregoing, an **ISDA Collateral Agreement**), that
 - (A) doesn't include any Protocol Excluded Modifying Provision;
 - (B) is not an Agreed Excluded ISDA Collateral Agreement; and
 - (C) doesn't require certain consents, approvals, agreements, authorizations or other action of a third party (unless obtained or deemed to have been given as per the Protocol).

The Negative Interest Rate Protocol

- Why are there six sections in the Attachment?
 - The portion of the Attachment that will apply to a particular Protocol Covered Collateral Agreement between two Adhering Parties will depend on which of the six ISDA Collateral Agreements was executed between those parties and is being amended by the Protocol.
 - Each of the six ISDA Collateral Agreements uses different terminology, includes different provisions and may entail different legal treatment (e.g., security interest vs. title transfer) which require different amendments.
 - The Protocol may amend any of the six ISDA Collateral Agreements if that agreement would be a Protocol Covered Collateral Agreement pursuant to the provisions of the Protocol.

The Negative Interest Rate Protocol

- How does the Protocol amend a Protocol Covered Collateral Agreement
 - Parties often agree to an Interest Rate in an annex, paragraph or supplement to collateral agreement.
 - The Interest Rate is the rate used to determine the Interest Amount for each Interest Period.
 - Under the CSA*, if an Interest Rate is specified, the Secured Party pays an Interest Amount to the Pledgor on cash collateral pledged by the Pledgor* to the Secured Party.*
 - Two parties that adhere to the Protocol can amend the CSA between them (if it is a Protocol Covered Collateral Agreement) to specify the consequence of a negative interest amount.

*Note that the terms “CSA”, “Secured Party” and “Pledgor” are used herein for convenience. As used herein, “CSA” means any ISDA Collateral Agreement; and “Secured Party” and “Pledgor” means any other defined terms for the related parties in the relevant ISDA Collateral Agreement (e.g., Chargor, Transferor, Transferee, etc.)

The Negative Interest Rate Protocol

- How does the Protocol amend a Protocol Covered Collateral Agreement? (cont'd)
 - If the Interest Amount for an Interest Period is negative, then the Pledgor will pay the absolute value of that that Interest Amount to the Secured Party in respect of cash collateral pledged by the Pledgor to the Secured Party for that Interest Period.
 - The Protocol makes other amendments throughout the relevant collateral agreement to conform to this amendment (e.g., providing that if an Interest Amount is negative, the payment of the absolute value of that amount is paid to the Secured Party using the same timing specified in the annex, paragraph or supplement to the Protocol Covered Collateral Agreement between the Adhering Parties as would be used for a positive Interest Amount).

The Negative Interest Rate Protocol

- A Protocol Excluded Modifying Provision is any of:
 - (i) a Custodial Interest Provision,
 - (ii) an Interest Amount Alternative Provision,
 - (iii) a Negative Interest Amount Provision,
 - (iv) a No Interest Provision,
 - (v) a Spread Provision, or
 - (vi) a Unilateral Posting Provision.

If an ISDA Collateral Agreement contains a Protocol Excluded Modifying Provision, that ISDA Collateral Agreement will not be a Protocol Covered Collateral Agreement. Exceptions include: (i) a partial inclusion of that ISDA Collateral Agreement as a Protocol Covered Collateral Agreement in the case of a Custodial Interest Provision in certain circumstances; and (ii) where the parties execute a bilateral agreement to opt-in to the Protocol and treat that ISDA Collateral Agreement as a Protocol Covered Agreement.

The Negative Interest Rate Protocol

- What is an Opt-in Agreement?
 - An agreement whereby Adhering Parties to an ISDA Collateral Agreement that contains a Protocol Excluded Modifying Provision nonetheless agree to amend their ISDA Collateral Agreements as per the terms of the Protocol.
 - An Opt-in Agreement is subject to bilateral agreement and execution by two Adhering Parties.
 - A form of Opt-in Agreement is provided on ISDA's website in the section on this Protocol in the link for View Protocol Materials.