

ISDA®

International Swaps and Derivatives Association, Inc.

SECOND ISDA JAPAN ~~CORPORATE~~ CALCULATION AGENT CITY PROTOCOL

published on ~~12 January~~ [●]2010
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (**ISDA**) has published this Second ISDA Japan ~~Corporate~~ Calculation Agent City Protocol (this **Protocol**) to enable parties to Protocol Covered Transactions (as defined below) to amend the terms of such Protocol Covered Transactions.

Accordingly, a party that has entered into a Protocol Covered 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.

1. Amendments

- (a) By adhering to this Protocol in the manner set forth in paragraph 2 below, a party (an **Adhering Party**) that wishes to amend the terms of a Protocol Covered Transaction, in each case on the terms and conditions set forth in this Protocol and the relevant Adherence Letter, agrees that the terms of each Protocol Covered 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 Annex to this Protocol. For the avoidance of doubt, where an agent signs an Adherence Letter on behalf of one or more clients, references to the Adhering Party in that instance and for the purposes of this Protocol (including the Annex to this Protocol) shall be to each such client.
- (b) An Adhering Party (i) who has also adhered to the ISDA Japan Corporate Calculation Agent City Protocol published by ISDA on 12 January, 2010 (the **Original Protocol**, and such Adhering Party, an **Original Protocol Adhering Party**) and (ii) who also has entered into a Protocol Covered Transaction with any other Original Protocol Adhering Party, agrees, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, that those certain amendments deemed made to the terms of each Protocol Covered Transaction between it and such other Original Protocol Adhering Party by virtue of such parties' adherence to the Original Protocol will be rescinded and replaced by those certain amendments agreed to in paragraph (a) of this Section 1.

2. Adherence and Effectiveness

- (a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with paragraph 5(e) below, to ISDA, as agent, of an Adherence Letter on or before ~~22 January~~^[●] 2010 (the **Cut-off Date**) or during the Subsequent Adherence Period (as defined below)(if any). After the Cut-off Date, ISDA will not accept any further Adherence Letters to the Protocol, subject to the designation of a Subsequent Adherence Period (as defined below) pursuant to paragraph 2(d) below.
- (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 other appropriate officer) of ISDA will be deemed to be an original.
- (b) As between any two Adhering Parties, the agreement to make the amendments contemplated by this Protocol, on the terms and conditions set forth in this Protocol and the relevant Adherence Letter, will be effective on the date of delivery (determined in accordance with paragraph 5(e) below) to ISDA, as agent, of an Adherence Letter (in accordance with paragraphs 2(a)(i) and 2(a)(ii) above) from the later of such two Adhering Parties to adhere. Any such amendments will apply to each Protocol Covered Transaction between the Adhering Parties and will be effective from 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 Protocol Covered Transaction that the parties may otherwise effect in accordance with the terms of that Protocol Covered Transaction and the Governing Master Agreement and:
- (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 Protocol will be void and ISDA will inform the relevant party of such fact as soon as reasonably possible after making such determination.
- (d) If ISDA determines in its absolute discretion that market interest justifies reopening adherence to this Protocol, ISDA may designate the first and final day of a subsequent adherence period (a **Subsequent Adherence Period**) by giving no less than ten calendar days' notice on its website www.isda.org (or by other suitable means). In the event that adherence is reopened, each Adherence Letter effectively delivered on any day during the Subsequent Adherence Period in accordance with the terms of this Protocol shall be deemed to have been effectively delivered.

- (e) Each Adhering Party acknowledges and agrees that adherence to this Protocol is irrevocable, irrespective of whether such adherence occurs on or prior to the Cut-off Date or during the Subsequent Adherence Period (if any). For the avoidance of doubt, each Adhering Party whose adherence to this Protocol occurs on or prior to the Cut-off Date shall also be an Adhering Party for purposes of any Subsequent Adherence Period without such Adhering Party being required to deliver any additional Adherence Letter during any such Subsequent Adherence Period.

3. Representations and Agreements

Each Adhering Party represents to each other Adhering Party with which it has or may have entered into a Protocol Covered Transaction, on the Implementation Date 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 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 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 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 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, reorganisation, 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 in respect of its obligations relating to the Governing Master Agreement.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Governing Master Agreement that each of the foregoing representations will be deemed to be a representation for purposes of Section 5(a)(iv) of the Governing Master Agreement that is an ISDA Master Agreement (or, in the case of a Governing Master Agreement that is not an ISDA Master Agreement, any analogous provision in such Governing Master Agreement) entered into on or 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 and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. 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 elsewhere in this Protocol or in the Annex to 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 a Protocol Covered Transaction, all terms and conditions of each Protocol Covered Transaction will continue in full force and effect in accordance with the provisions of the Documentation as in effect immediately prior to the Implementation Date. Except as explicitly stated in this Protocol, nothing herein shall constitute a waiver or release of any rights of any Adhering Party under the Documentation for the Protocol Covered Transaction. This Protocol will, with respect to its subject matter, survive, and any amendments deemed to be made pursuant to the Protocol Covered Transaction, will form a part of each Governing Master Agreement between the Adhering Parties notwithstanding Section 9(a) (or in the case of an ISDA Master Agreement that is a 1992 ISDA Master Agreement (Local

Currency – Single Jurisdiction), Section 8(a)) of the Governing Master Agreement (or in the case of a Governing Master Agreement that is not an ISDA Master Agreement, any analogous provision in such Governing Master Agreement).

- (b) **Amendments.** An amendment, modification or waiver in respect of the matters contemplated by this Protocol will, as between two Adhering Parties, only be effective if made in accordance with the terms of the relevant Governing Master Agreement and then only with effect between the parties to that Governing Master Agreement (and will only be effective to amend or override the provisions contained in paragraph 1 of this Protocol and the Annex to this Protocol if it expressly refers in writing to this paragraph 5(b) of this Protocol and would otherwise be effective in accordance with Section 9(b) (or, in the case of an ISDA Master Agreement that is the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), Section 8(b)) of the Governing Master Agreement (or in the case of a Governing Master Agreement that is not an ISDA Master Agreement, any analogous provision in such Governing Master Agreement)).
- (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, be governed by and construed in accordance with the law specified to govern that Governing Master Agreement and otherwise in accordance with applicable choice of law doctrine.
- (e) **Notices.** Any Adherence Letter must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at japanacprotocol@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.
- (f) **Party Agreed Excluded Transactions.** The Adhering Parties may agree by separate bilateral agreement(s) that one or more specified Credit Derivative Transactions entered into between them shall not be Protocol Covered Transactions for purposes of this Protocol (each such Credit Derivative Transaction, a **Party Agreed Excluded Transaction**).

6. Definitions

As used in this Protocol, **Credit Support Document** and **Transaction** each has the meaning given that term in the related Governing Master Agreement. Each capitalized term used in this Protocol or the Annex to this Protocol but not defined herein or therein has the meaning given to that term in the Credit Derivatives Definitions.

References in this Protocol and the Annex to this Protocol to the following terms shall have the following meanings:

[CDS on ABS Transaction has the meaning ascribed to it in the July 2009 Protocol.](#)

Confirmation means, in relation to any Protocol Covered Transaction between two Adhering Parties, each document or other confirming evidence between them or otherwise effective for the purpose of confirming or evidencing such Protocol Covered Transaction and includes, where applicable, the terms of any master confirmation agreement that they have agreed will govern such Protocol Covered Transaction.

[Covered Index Transaction has the meaning ascribed to it in the July 2009 Protocol.](#)

[Covered Non-Auction Transaction has the meaning ascribed to it in the July 2009 Protocol.](#)

[Covered Non-Swaption Transaction has the meaning ascribed to it in the July 2009 Protocol.](#)

[Covered Swaption Transaction has the meaning ascribed to it in the July 2009 Protocol.](#)

Credit Derivatives Definitions has the meaning ascribed to it in the definition of "Credit Derivative Transaction" below.

Credit Derivative Transaction means any transaction that is identified in the related Confirmation as a Credit Derivative Transaction or any transaction that incorporates ~~the 2003 ISDA Credit Derivatives Definitions, as amended and supplemented by the 2009 ISDA Credit Derivatives Determinations Committee, Auction Settlement and Restructuring Supplement to~~ the 2003 ISDA Credit Derivatives Definitions (the **Credit Derivatives Definitions**).

Documentation means the Governing Master Agreement (or master confirmation, general terms confirmation, or any document analogous thereto) and Confirmation (or transaction supplement or any document analogous thereto) relating to a Protocol Covered Transaction as amended, supplemented, varied or modified as at the Implementation Date.

[Excluded Index Transaction has the meaning ascribed to it in the July 2009 Protocol.](#)

Excluded Transaction means [any of the following:](#)

(i) any Credit Derivative Transaction that references a Reference Entity (as defined in the Credit Derivatives Definitions) or a portfolio of Reference Entities (as defined in the Credit Derivatives Definitions) that is also substantially identical to the same or the relevant portfolio for any series of credit linked notes or other similar securities and for which the Adhering Parties intend settlement of any Credit Event to be consistent with the settlement terms application to such securities; ~~and (ii)~~

(ii) a Loan Only Transaction (as defined in the July 2009 Protocol);

(iii) a U.S. Muni Transaction (as defined in the July 2009 Protocol);

(iv) a CDS on ABS Transaction (as defined in the July 2009 Protocol);

(v) an Excluded Index Transaction (as defined in the July 2009 Protocol); or

(vi) any Party Agreed Excluded Transaction.

Governing Master Agreement means, in respect of a Protocol Covered Transaction, the ISDA Master Agreement or other form of master agreement governing such Protocol Covered Transaction and of which such Protocol Covered Transaction forms part, whether executed by the parties thereto or incorporated by reference (either directly or under the terms of a related master confirmation agreement) in the Confirmation relating to such Protocol Covered Transaction.

ISDA Master Agreement means any of the following: (i) the 2002 ISDA 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.

Implementation Date means in relation to this Protocol and any two Adhering Parties, the date on which adherence is effective as between them pursuant to paragraph 2(b) of this Protocol.

July 2009 Protocol means the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring CDS Protocol published by ISDA on 14 July 2009.

Loan Only Transaction has the meaning ascribed to it in the July 2009 Protocol.

Party Agreed Excluded Transaction has the meaning ascribed to it in paragraph 5(f) of this Protocol.

Protocol Covered Transaction means any Credit Derivative Transaction ~~that (i)~~ [the Trade Date in respect of which falls on or prior to the Implementation Date] that (i) is either a Covered Index Transaction (as defined in the July 2009 Protocol), a Covered Swaption

Transaction (as defined in the July 2009 Protocol), a Covered Non-Swaption Transaction (as defined in the July 2009 Protocol) or a Covered Non-Auction Transaction (as defined in the July 2009 Protocol); (ii) is not an Excluded Transaction; and (iii) whose Confirmation identifies or has the effect of identifying "Japan Corporate" or "Japan Sovereign" as the relevant "Transaction Type" with respect to the Reference Entity (as defined in the Credit Derivatives Definitions) as of the relevant date of determination in respect of such Reference Entity.

Subsequent Adherence Period has the meaning ascribed to it in paragraph 2(d) of this Protocol.

U.S. Muni Transaction has the meaning ascribed to it in the July 2009 Protocol.

EXHIBIT 1
to Second ISDA Japan-~~Corporate~~ Calculation Agent City Protocol

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

Send to: japancacprotocol@isda.org

Dear Sirs,

Second ISDA Japan-~~Corporate~~ Calculation Agent City Protocol - Adherence

The purpose of this letter is to confirm our adherence to the Second ISDA Japan-~~Corporate~~ Calculation Agent City Protocol as published by the International Swaps and Derivatives Association, Inc. on ~~12-January~~[\[●\]](#) 2010 (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 each Governing Master Agreement between us and each other Adhering Party.

1. Specified Terms

The amendments in the Annex to the Protocol shall apply to each [Confirmation with respect to a Protocol Covered Transaction that supplements, forms part of and is subject to a](#) Governing Master Agreement to which we are a party in accordance with the terms of the Protocol and this Adherence Letter.

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:

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]¹

By:

Name:

Title:

Signature:

¹ Specify legal name of Adhering Party.

ANNEX

With effect from the Implementation Date, ~~the definition of "Calculation Agent City" in each Confirmation with respect to a Protocol Covered Transaction that supplements, forms part of, and is subject to each Governing Master Agreement, with respect to a Protocol Covered Transaction, shall be amended by deleting reference to "London" (or any other city which is not "Tokyo") and replacing the reference with "Tokyo".~~ shall be amended such that the Calculation Agent City shall be deemed to be "Tokyo" with respect to any Reference Entity that the Confirmation identifies or has the effect of identifying "Japan Corporate" or "Japan Sovereign" as the relevant "Transaction Type" as of the relevant date of determination in respect of such Reference Entity.

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