



International Swaps and Derivatives Association, Inc.

LCDS PROTOCOL

published on July 24, 2007

by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published this LCDS Protocol (this "**Protocol**"), to enable parties to Covered Transactions to effect certain amendments to each Covered Transaction.

Accordingly, a party that has entered and/or anticipates entering into a 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

By adhering to this Protocol in the manner set forth in Section 2 below, a party (an "**Adhering Party**") that has entered and/or anticipates entering into a Covered Transaction agrees, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, that certain amendments will be deemed to be made to the Documentation governing each Covered Transaction between it and any other Adhering Party in accordance with the terms of Schedule 1.

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(f) below, to ISDA, as agent, of an Adherence Letter on or before August 24, 2007 (the "**Cut-off Date**").

(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) The agreement to make the amendments contemplated by this Protocol, on the terms and subject to the conditions set forth in this Protocol, will, as between any two Adhering Parties, be effective on receipt by ISDA, as agent, of an Adherence Letter from the later of the Adhering Parties to adhere. Any

such amendments will apply to each Covered Transaction between the Adhering Parties (whether entered into before, on or after the Cut-off Date).

(c) This Protocol is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Covered Transaction that the parties may otherwise effect in accordance with the terms of that Covered Transaction and the Governing ISDA Master Agreement.

(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.

3. Representations

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

(a) **Status.** It (i) 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, (ii) 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 each Covered Transaction, 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 each Covered Transaction, 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 each Covered Transaction, 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 a Covered Transaction.

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 (then or in the future) 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 elsewhere in this Protocol or in Schedule 1) 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 Covered Transaction, all terms and conditions of each Covered Transaction will continue in full force and effect in accordance with its provisions on the effective date of that amendment. As used in the Documentation governing each Covered Transaction, the terms "**Transaction**", "**this Transaction**", "**Confirmation**", "**this Confirmation**" and words of similar import will, unless the context otherwise requires, mean the Covered Transaction and related Confirmation as amended pursuant to this Protocol in accordance with the relevant Adherence Letters. 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 Covered Transaction between the Adhering Parties notwithstanding Section 9(a) of the Governing ISDA Master Agreement.

(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 that Governing ISDA Master Agreement (and will only be effective to amend or override the provisions contained in Section 1 of this Protocol and Schedule 1 to this Protocol if it expressly refers in writing to this Section 5(b) of this Protocol and would otherwise be effective in accordance with Section 9(b) of the Governing ISDA Master Agreement).

(c) **Limited Right to Revoke.** Adherence to this Protocol is irrevocable except that an Adhering Party may, by subsequently delivering to ISDA, as agent, in accordance with the first sentence of Section 5(f) below a notice substantially in the form of Exhibit 2 to this Protocol (a "**Revocation Notice**"), designate a date (an "**Earlier Cut-off Date**") as the last date on which any counterparty may adhere to this Protocol in respect of any Covered Transaction then or in the future between them.

(i) Any designated Earlier Cut-off Date that would otherwise fall on a day that is less than three calendar days following the day on which the Revocation Notice is effectively delivered will be deemed to occur on the day that is three calendar days following the date of effective delivery. Any designated Earlier Cut-off Date that would otherwise fall, after giving effect to the preceding sentence (if applicable), on a day that is not a day on which the New York ISDA office is open will be deemed to occur on the next day the New York ISDA office is open.

(ii) Upon the effective designation of an Earlier Cut-off Date by an Adhering Party, this Protocol will not amend or otherwise affect any Covered Transaction between that Adhering Party and a party which adheres to this Protocol after the day on which that Earlier Cut-off Date occurs or is deemed to occur. The foregoing is without prejudice to (A) any amendment to any Covered Transaction between two Adhering Parties effected pursuant to this Protocol on or before the day on which that Earlier Cut-off Date occurs or is deemed to occur and (B) any amendment effected pursuant to this Protocol to any Covered Transaction entered into after the day on which that Earlier Cut-off Date occurs or is deemed to occur between two Adhering Parties that each adhered to this Protocol on or before the day on which that Earlier Cut-off Date occurs or is deemed to occur, which in each case will be (or continue to be) effective.

(iii) Each Revocation Notice must be delivered in duplicate, 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.

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

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

(d) **Headings.** The headings used in this Protocol and any Adherence Letter or Revocation Notice 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 or Revocation Notice.

(e) **Governing Law.** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Covered Transaction between them, be governed by and construed in accordance with the law specified to govern that Covered Transaction and otherwise in accordance with applicable choice of law doctrine.

(f) **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 LCDSProtocol@isda.org and will be deemed effectively delivered on the date it is delivered unless on the date of that delivery the New York ISDA 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 the New York ISDA 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

As used in this Protocol, "**Confirmation**", "**Credit Support Document**" and "**Transaction**" each has the meaning given that term in the related Governing ISDA Master Agreement and "**Credit Derivative Transaction**" has the meaning given to such term in the 2003 ISDA Credit Derivatives Definitions, as published by ISDA (the "**Credit Definitions**"). Each capitalized term used in this Protocol or Schedule 1 but not defined herein or therein has the meaning given that term in the Credit Definitions.

References in this Protocol and Schedule 1 to the following terms have the meaning indicated below:

"**Covered Transaction**" means each of (i) an Old LCDS Transaction, (ii) an option to enter into an Old LCDS Transaction or (iii) an Old When-Issued LCDS Transaction, in each case in respect of which each

of the parties is an Adhering Party, provided that a Transaction that is an Excluded Transaction shall not be a Covered Transaction.

"Documentation" means the Governing ISDA Master Agreement and a Confirmation or master confirmation, as applicable, relating to a Covered Transaction.

"Excluded Transaction" means a Credit Derivative Transaction in respect of which a NOPS Fixing Date (as defined in the Documentation relating to such Credit Derivative Transaction) or Physical Settlement (in whole or in part) has occurred prior to the Inter-party Amendment Date in respect of the parties to such Credit Derivative Transaction.

"Governing ISDA Master Agreement" means, in respect of a Covered Transaction, the ISDA Master Agreement governing such Covered Transaction, whether executed by the parties thereto or incorporated by reference in the Confirmation relating to such Covered Transaction.

"Inter-party Amendment Date" means, as between two Adhering Parties, the day on which the later of them adheres to this Protocol in accordance with Section 2 above.

"Old LCDS Transaction" means a Credit Derivative Transaction evidenced by a Confirmation that incorporates the Syndicated Secured Loan Credit Default Swap Standard Terms Supplement as published by the International Swaps and Derivatives Association, Inc. on 8 June 2006.

"Old When-Issued LCDS Transaction" means a Credit Derivative Transaction that is a when-issued loan credit default swap having a Trade Date prior to May 22, 2007.

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

International Swaps and Derivatives Association, Inc.

Send to: LCDSProtocol@isda.org

Dear Sirs,

LCDS Protocol - Adherence

The purpose of this letter is to confirm our adherence to the LCDS Protocol, as published by the International Swaps and Derivatives Association, Inc. on July 24, 2007 (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 Covered Transaction (now or in the future) between us and each other Adhering Party.

1. Specified Terms

The amendments in Section 1 and Schedule 1 of the Protocol shall apply to Covered Transactions to which we are a party.

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 the 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. If you are an investment or asset manager and act on behalf of multiple funds, you must indicate in the signature block, "Investment/Asset Manager, acting on behalf of the funds and accounts listed in the relevant Master Agreement between it and another Adhering Party". A separate Adherence Letter for each fund does *not* need to be submitted to ISDA. Further, no specific names of clients of the investment or asset manager will be publicly disclosed on the ISDA website in connection with the Protocol.

Form of Revocation Notice

[Letterhead of Adhering Party]

[Date]

International Swaps and Derivatives Association, Inc.

Send to: LCDSProtocol@isda.org

Dear Sirs,

LCDS Protocol - Earlier Cut-off Date

The purpose of this letter is to notify you that we wish to designate as the last date on which any counterparty may adhere to the LCDS Protocol, as published by the International Swaps and Derivatives Association, Inc. on July 24, 2007 (the "**Protocol**"), in respect of any Covered Transaction (now or in the future) between us the following date (the "**Earlier Cut-off Date**"):

EARLIER CUT-OFF DATE: []

This letter constitutes a Revocation Notice as referred to in the Protocol.

We consent to the publication of the conformed copy of this notice by ISDA on or after the Earlier Cut-off Date and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]²

By:

Name:
Title:
Signature:

² Specify legal name of Adhering Party. If you are an investment or asset manager and act on behalf of multiple funds, you must indicate in the signature block, "Investment/Asset Manager, acting on behalf of the funds and accounts listed in the relevant Master Agreement between it and another Adhering Party". A separate Adherence Letter for each fund does *not* need to be submitted to ISDA. Further, no specific names of clients of the investment or asset manager will be publicly disclosed on the ISDA website in connection with the Protocol.

SCHEDULE 1

The Documentation relating to each Covered Transaction shall be modified as follows. To the extent any provision of the Credit Definitions is inconsistent with the terms of this Schedule 1, the terms of this Schedule 1 shall govern.

- (a) *Incorporation of Standard Terms Supplement.* Each provision in the Documentation relating to each Covered Transaction that incorporates the Syndicated Secured Loan Credit Default Swap Standard Terms Supplement as published by the International Swaps and Derivatives Association, Inc. on 8 June 2006 shall be deleted and replaced with a provision incorporating the Syndicated Secured Loan Credit Default Swap Standard Terms Supplement as published by the International Swaps and Derivatives Association, Inc. on May 22, 2007 (as amended by clause (b) below, the "**2007 LCDS Standard Terms**").
- (b) *Adoption of Physical Settlement Rider.* For purposes of any Covered Transaction that has a Trade Date prior to May 22, 2007, the 2007 LCDS Standard Terms shall be amended to provide that any Physical Settlement will take place according to the terms of the version of the Syndicated Secured Loan Credit Default Swap Physical Settlement Rider published by The Loan Syndications and Trading Association, Inc. as of June 18, 2007.
- (c) *Old When-Issued LCDS Transactions.* Each Covered Transaction that is an Old When-Issued LCDS Transaction shall be subject to the terms of the 2007 LCDS Standard Terms and the Documentation in respect of such Old When-Issued LCDS Transaction shall be amended to incorporate the 2007 LCDS Standard Terms and to such further extent as is necessary to give effect to this provision.