

**Memorandum on the processing of Unitymedia GmbH transactions**

**(published on June 28, 2012)**

*This note has been prepared by ISDA's Credit Steering Committee (the "CSC") to explain the CSC's recommendation for processing single name transactions and to record the CSC's understanding as to action being taken by Markit and DTCC in relation to indices and single name transactions referencing Unitymedia. This note does not constitute legal advice to any interested person from ISDA or the CSC. Further, neither ISDA nor the CSC undertake any duty of care, nor shall they otherwise be liable, to any interested person.*

On June 1, 2012 the EMEA Determinations Committee (the "DC") resolved that the corporate events related to Unitymedia GmbH that occurred in 2010 could not be treated as a name change. The DC further clarified in a statement dated June 1, 2012 that it was of the view that the merger of Unitymedia GmbH ("Old Unitymedia") with and into UPC Germany GmbH (now known as Unitymedia GmbH) ("New Unitymedia") on 16 September 2010 (the "Merger Date") would have in fact constituted a Succession Event in respect of Old Unitymedia but for the 90-day look back period that is applicable for the purposes of determining a Successor to a Reference Entity. As such, no Successor to Old Unitymedia could now be determined by the DC pursuant to Section 2.2 of the Credit Derivatives Definitions.

**Existing Single Name Transactions**

In an attempt to promote a consistent market approach in light of the DC's determination and clarification statement, ISDA's Credit Steering Committee has recently held discussions on the processing of existing single name transactions relating to Unitymedia GmbH (RED Codes: DLD98P, DLD98PAA1, DLD98PAB9).

The CSC has been advised by external counsel that in their opinion, subject as provided below, the Reference Entity for new single name CDS transactions relating to Unitymedia with a Trade Date (or in the case of index trades, an index Effective Date) on or after the Merger Date should be construed as being New Unitymedia rather than Old Unitymedia, notwithstanding the specification in the related Confirmation or Index, as applicable, of a RED Code indicating Old Unitymedia. This outcome is subject to there not being specific facts in the case of an individual trade (other than the specification of the RED Code) indicating that the parties specifically intended to trade on Old Unitymedia.

In a poll of the CSC members, a majority agreed with external counsel's view. The CSC therefore agreed by a majority vote to publish a recommendation that the following action be taken in respect of existing single name CDS transactions referencing Unitymedia:

- (i) New Transactions with a Trade Date on or after the Merger Date that are confirmed using a RED Code that relates to Old Unitymedia: DTCC to provide a facility to allow parties to update the RED Code to a New Unitymedia RED Code (D8544N or D8544NAA9) (see below for further information about DTCC processing); and
- (ii) Transactions with a Trade Date prior to the Merger Date: no action to be taken.

The CSC notes that parties are of course free to seek their own legal advice on action to take with respect to Unitymedia CDS transactions.

#### Existing Index Transactions

Markit has updated the Index Annexes for iTraxx Europe Crossover Series 14, 15 and 16 to reflect the latest RED PAIR CLIP of D8544NAA9 for New Unitymedia. Markit has stated that this update is consistent with the Reference Obligation initially specified in those Index Annexes (which is ISIN: XS0468466056 in each case). The same Reference Obligation is also included in the on-the-run iTraxx Europe Crossover Series 17 index. The updated Index Annexes were published on June 18, 2012 and Markit RED files were updated on the same date. A note has been added to the index annexes to highlight this change. The affected indices were not, nor will they be, re-versioned. These actions were approved by the Markit iTraxx European Indices Governance Committee (after Markit had consulted with the CSC).

The CSC is further advised that no action is to be taken in respect of any iTraxx Europe Crossover Series with an Effective Date prior to the Merger Date (Series 5-13 inclusive).

#### DTCC Processing:

Further to the recommendation set out above, DTCC will setup an event in the Trade Information Warehouse (“TIW”) as a ‘Manual’ adherence event. The DTCC event will allow firms to update their single name transactions with a Trade Date on or after the Merger Date from the Old Unitymedia RED Code(s) to the New Unitymedia entity RED Code(s). In order for the trades to be processed in this event, both parties must adhere the trade to the event to make the trade eligible for event processing. Trades can be adhered any time after the event has been setup in the TIW and until the Event Processing Start Date (which DTCC will advise to its users in due course).