

ISDA[®]

International Swaps and Derivatives Association, Inc.

ISDA NOVATION PROTOCOL II

published on February 1, 2006
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. ("ISDA") has published this ISDA Novation Protocol II (this "Protocol") to enable parties to confirm their understanding and intentions regarding the transfer by novation of Covered Transactions.

Accordingly, a party that has entered and/or anticipates entering into Covered Transactions governed by a Master Agreement 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 Annex 1 hereto have the meaning ascribed to them in Section 6 of this Protocol or, if not defined therein, in the relevant Master Agreement or the 2004 ISDA Novation Definitions (the "Novation Definitions").

1. Amendments

(a) 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 Master Agreement 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 any Master Agreement between it and any other Adhering Party and that certain procedures will be followed by such Adhering Party (acting as Transferor, Transferee or Remaining Party) in relation to a transfer by novation of a Covered Transaction.

(b) The amendments and agreements provided for in this Protocol are set forth in Annex 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. ISDA shall have the right, in its absolute discretion, upon sixty days' notice to Adhering Parties to designate a closing date of the Protocol (the "Cut-off

Date"). 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) The agreement to make the amendments contemplated by this Protocol and to follow the procedures set forth in this Protocol in relation to a transfer by novation of a Covered Transaction, on the terms and subject to the conditions set forth in this Protocol, as between any two Adhering Parties, will be effective on receipt by ISDA, as agent, of an Adherence Letter from the later of the Adhering Parties to adhere. Any such amendments and procedures will apply to each transfer by novation of a Covered Transaction between the Adhering Parties (whether entered into before, on or after the Cut-off Date or the relevant Annual Revocation Date, if applicable, and whether the Adhering Party is acting as the Transferor, the Transferee or the Remaining Party).

(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 the relevant 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 Section will be void.

3. Representations

Each Adhering Party represents to each other Adhering Party with which it has or may have a Master Agreement, on the date on which the later of them adheres to this Protocol in accordance with Section 2 above 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 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 relevant 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 relevant 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 relevant 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 relevant Master Agreement.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a 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 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 in Annex 1 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 a Master Agreement, all terms and conditions of the Master Agreement will continue in full force and effect in accordance with its provisions on the effective date of that amendment. 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 the Master Agreement between the Adhering Parties notwithstanding Section 9(a) of the Master Agreement.

(b) **Limited Right to Revoke.** Adherence to this Protocol is irrevocable, except that on any Business Day during the Annual Revocation Period, an Adhering Party may deliver to ISDA, as agent, a notice substantially in the form of Exhibit 2 to this Protocol (a "Revocation Notice") to designate the next Annual Revocation Date as the last date on which any counterparty may adhere to this Protocol in respect of any Master Agreement then or in the future between the counterparty and such Adhering Party.

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

(ii) Each Revocation Notice must be delivered by the means specified in the first sentence of Section 5(f) below.

(iii) 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.

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

(c) **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 relevant Master Agreement and then only with effect between the parties to that Master Agreement (and will only be effective to amend or override the provisions

contained in Annex 1 to 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 Master Agreement).

(d) **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.

(e) **Governing Law.** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of the relevant Master Agreement between them, be governed by and construed in accordance with the law specified to govern that Master Agreement 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 protocol@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

(a) "Annual Revocation Date" means, with respect to each calendar year, February 15 of such calendar year. If February 15 in any calendar year is not a day on which the ISDA's New York office is open, the Annual Revocation Date with respect to such calendar year will be deemed to occur on the next day that the ISDA's New York office is open.

(b) "Annual Revocation Period" means the period between January 1 and January 31 of any calendar year.

(c) "Covered Transaction" means a Credit Derivative Transaction or an Interest Rate Transaction.

(d) "Credit Derivative Transaction" means any transaction that is identified in the related confirmation as a credit derivative transaction or credit swap transaction or any transaction that incorporates the 1999 ISDA Credit Derivatives Definitions or the 2003 ISDA Credit Derivatives Definitions.

(e) "Implementation Date" means the date any adherence as between any two Adhering Parties is effective pursuant to Section 2(b) of this Protocol.

(f) "Interest Rate Transaction" means any transaction in which the payment obligations of both parties to the transaction are calculated solely by reference to the provisions of the 2000 ISDA Definitions or the 1991 ISDA Definitions (other than a

transaction for which one or both of the payment obligations are calculated by reference to the Price Options defined in Section 7.2 of the 1991 Definitions).

(g) "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.

(h) "Novation Confirmation" means documents and other confirming evidence exchanged between the parties or otherwise effective for the purpose of confirming or evidencing the transfer by novation of a Covered Transaction.

(i) "Remaining Party" means a party to a Transaction whose consent is required in connection with, or who has consented to, a Transferor's transfer by novation and the acceptance thereof by the Transferee of all the Transferor's rights, liabilities, duties and obligations with respect to such Remaining Party under and in respect of the Novated Amount of a Transaction.

(j) "Transferee" means a party that proposes to accept, or has accepted, a Transferor's transfer by novation of all the rights, liabilities, duties and obligations of a Transferor with respect to a Remaining Party under and in respect of the Novated Amount of a Transaction.

(k) "Transferor" means a party to a Transaction that proposes to transfer, or has transferred, by novation to a Transferee all its rights, liabilities, duties and obligations with respect to a Remaining Party and releases and discharges such Remaining Party under and in respect of the Novated Amount of a Transaction.

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

Send to: protocol@isda.org

Dear Sirs,

ISDA Novation Protocol II - Adherence

The purpose of this letter is to confirm our adherence to the ISDA Novation Protocol II as published by the International Swaps and Derivatives Association, Inc. on February 1, 2006 (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 the Master Agreement (now or in the future) between us and each other Adhering Party.

1. Specified Terms

The terms of Annex 1 shall apply.

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.

EXHIBIT II
to ISDA Novation Protocol II

Form of Revocation Notice

[Letterhead of Adhering Party]
[Date]

Send to: protocol@isda.org

Dear Sirs,
ISDA Novation Protocol II – Designation of Annual Revocation Date

The purpose of this letter is to notify you that we wish to designate this year's Annual Revocation Date as the last date on which any counterparty may adhere to the ISDA Novation Protocol II as published by the International Swaps and Derivatives Association, Inc. on February 1, 2006 (the "Protocol") in respect of any Master Agreement (now or in the future) between us.

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 and after the Annual Revocation 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.

**ANNEX 1
to ISDA Novation Protocol II**

Each of the forms of Master Agreement published by ISDA includes a provision that, subject to certain limited exceptions, neither the Master Agreement nor any interest or obligation in or under the Master Agreement (including any Swap Transaction or Transaction, as defined in the respective Master Agreement) may be transferred by either party without the prior written consent of the other party. Each Master Agreement explicitly provides that any purported transfer not in compliance with the prior written consent requirement will be void.

Consent to transfer may, unless the parties have otherwise agreed, be withheld for any or no reason. Relevant factors in a party's decision whether or not to consent to a transfer may include funding costs, credit exposure concerns, credit valuation charges, collateral, netting, tax, operational, accounting, relationship and other considerations relating to either the Transferor or the Transferee.

Accordingly, each Adhering Party confirms and agrees as follows:

1. ***Familiarity with Certain ISDA Publications.*** Each Adhering Party confirms that it is familiar with (a) the "ISDA Statement on Consent Requirement for Transfer of Transactions" published on April 3, 2003 and available at <http://www.isda.org/whatsnew/pdf/isdastatement.pdf>, and (b) the "Best Practice Statement: Processing Novations" published by the Process Working Group of the ISDA Operations Committee on May 4, 2004 and available at <http://www.isda.org/publications/pdf/BestPracticeStatement.pdf>. While the documents referred to in (a) and (b) are not legally binding on an Adhering Party, each Adhering Party acknowledges the importance of the issues and processes highlighted in those documents.

2. ***Process of Obtaining Consent.***
 - (a) ***Agreement to Protocol Terms.*** Notwithstanding Section 7 or Section 9(b) or anything else to the contrary in the Master Agreement between the Adhering Parties and unless the parties to a Master Agreement have previously agreed that prior written consent is not required for the transfer by novation of any rights, liabilities, duties and obligations under such Master Agreement, each Adhering Party agrees that, from and after the Implementation Date, the transfer by novation of any interest or obligation in or under a Covered Transaction may be accomplished in accordance with the terms of this Protocol. The process described in this Annex 1 assumes that, in the transfer by novation of a Covered Transaction, each of the Transferor, the Transferee and the Remaining Party is an Adhering Party. In the event that only two of the Transferor, the Transferee and the Remaining Party are Adhering Parties, such Adhering Parties agree to follow

the process described in this Annex 1 to the extent practicable and consistent with the rights of the party to such transfer by novation that is not an Adhering Party.

(b) *Obligations of Transferor.* Each Adhering Party agrees that, when it is in the position of Transferor in a proposed transfer by novation of a Covered Transaction:

- (i) it shall be responsible for seeking the Remaining Party's consent to a proposed transfer by novation of a Covered Transaction, which consent may be requested by electronic messaging or communications system or email;
- (ii) in such request, it shall identify and copy the Transferee(s) and shall provide detail sufficient to permit the Remaining Party to identify the Covered Transaction proposed to be transferred, including, at a minimum, the information set forth in the form of request for consent attached as Exhibit A to this Protocol and any other trade details it considers relevant for trade processing; and
- (iii) promptly after obtaining evidence of the Remaining Party's consent as contemplated by Section 2(c) below, it shall provide such evidence to the Transferee, unless it is evident from Remaining Party's response that Transferee has received a copy directly from Remaining Party.

(c) *Obligations of Remaining Party.* Each Adhering Party agrees that, when it is in the position of Remaining Party in a proposed transfer by novation of a Covered Transaction, it will respond promptly to any request made by a Transferor for consent to a proposed transfer by novation of a Covered Transaction on the day on which it receives such request. Such response may be by electronic messaging or communications system or email, shall indicate whether or not Remaining Party consents to such transfer and shall copy any persons copied on Transferor's request for consent.

(d) *Obligations of Transferee.* Each Adhering Party agrees that, when it is in the position of Transferee in a proposed transfer by novation of a Covered Transaction, it will, promptly after it receives evidence of the consent of the Remaining Party to the transfer by novation of a Covered Transaction, confirm with the Remaining Party, by electronic messaging or communications system or email, all relevant trade details of the Covered Transaction that has been transferred.

(e) *Effect of Failure or Delay in Obtaining Consent of Remaining Party.*

- (i) Transferor and Transferee agree that they are legally bound by the terms of a transfer by novation of a Covered Transaction from the moment they agree to those terms (whether orally or otherwise), subject only to

the condition that evidence of the consent of the Remaining Party to such transfer is received by the Transferee not later than 6:00 p.m. in the location of the Transferee on the day such transfer is agreed to.

(ii) If evidence of the consent of the Remaining Party to such transfer is not received by Transferee by 6:00 p.m. in the location of the Transferee on the day such transfer is agreed to or if Remaining Party indicates to Transferor and Transferee that it does not consent to such transfer, the following provisions shall apply:

(A) The Transferor and the Transferee shall be deemed not to have entered into a transfer by novation of the Covered Transaction.

(B) The Transferor and the Transferee shall be deemed instead to have entered into a Transaction identical to the Covered Transaction in which Transferor is in the position taken by the Remaining Party in such Covered Transaction and Transferee is in the position taken by the Transferor in such Covered Transaction. The effective date of such new Transaction shall be the effective date of the proposed transfer by novation of the Covered Transaction. All other terms and conditions of the original Covered Transaction will be replicated in the new Transaction such that the Transferor's economic position under the original Covered Transaction shall be offset by its economic position under the new Transaction. The new Transaction shall be a Transaction governed by the Master Agreement between Transferor and Transferee, and a Confirmation of such new Transaction shall be entered into by Transferor and Transferee, as contemplated by Section 9(e)(ii) of the Master Agreement.

(C) Any obligation that Transferor or Transferee may have to make a payment to the other in connection with the proposed transfer of a Covered Transaction shall not be affected by the provisions of this Section 2(e), and such payment shall be made in connection with the new Transaction referred to in Section 2(e)(ii)(B) above at such time and in such amount as originally agreed by the parties.

(f) Agreement to Enter Into Novation Documentation. Each Adhering Party agrees that a Novation Confirmation will be entered into by Transferor, Transferee and Remaining Party as soon as practicable after consent to transfer by novation of a Covered Transaction is received from the Remaining Party. The Novation Confirmation may be executed and delivered in counterparts (including by facsimile transmission) or may be created by an exchange of telexes, by an exchange of electronic messages or communications on an electronic messaging or communications system or by an exchange of e-mails, which in each case will

be sufficient for all purposes to evidence the transfer by novation of a Covered Transaction. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or communication or e-mail constitutes a Novation Confirmation. Failure by the parties to execute a Novation Confirmation shall not affect the validity of a transfer by novation of a Covered Transaction pursuant to the terms of this Annex 1.

3. ***Failure to Comply.*** Any purported transfer for which the consent of the Remaining Party pursuant to the terms of this Annex 1 is not obtained or that is not otherwise in compliance with Section 7 of the relevant Master Agreement shall be void. Failure by any Adhering Party to comply with the agreements and obligations set forth in this Annex 1 shall not constitute an Event of Default or Potential Event of Default under Section 5(a)(ii) of the relevant Master Agreement.

EXHIBIT A TO
ISDA NOVATION PROTOCOL II

**Standard Email/Bloomberg Message from
Transferor to Remaining Party**

From: [contact name at Transferor]
To: [contact name at Remaining Party]
CC: [contact name at Transferee]

Re: Request for Consent to Proposed Transfer
Transaction References (include if available):
[Our Reference Number:]
[Your Reference Number:]
[Third Party Reference: *eg Swapswire, DTCC and reference information*]

We have agreed with the proposed Transferee to the transfer by novation of the transaction described below (the "Transaction"), subject to your consent to such transfer.

Transferor: []
Proposed Transferee: []
Novation Trade Date: []
Trade Date: []
Novated Amount: []

Details to Include for Credit Derivative Transactions

Reference Entity / Ticker / RED Code: []
Reference Obligation / CUSIP: []
Scheduled Termination Date: []
[Notional allocation]
[Non-Standard Terms]

Details to Include for Interest Rate Derivative Transactions

Termination Date: []
Notional Amount: []
[Fixed Rate:] []
[Floating Rate:] []

Please advise promptly as to your consent to the transfer by novation of this Transaction, by replying to all addressees of this email and indicating your decision regarding consent.