

Canadian Law Force Majeure Additional Language

The Canadian Legal and Regulatory Affairs Committee determined that it might be beneficial to further define "Force Majeure Event", as used in the 2002 ISDA® Master Agreement, given Canadian common law case law on point. The suggested amendment to Section 5(b)(ii) should be used where the 2002 ISDA Master Agreement is governed by the law of a province of Canada (other than Quebec), or where there is a likelihood of having to litigate a force majeure issue in such a province.

The underlined portions below highlight the additional language added to Section 5(b)(ii) in the 2002 ISDA Master Agreement.

(ii) ***Force Majeure Event.*** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of any event or circumstance, including, without limitation, any natural, technological, political or governmental (which for greater certainty includes an act of state) or similar event or circumstance, occurring after a Transaction is entered into, on any day: -

(1) the office through which such party (which will be the Affected Party) makes and receives payment or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit

Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as such event or circumstance was not anticipated at the date of entering into the Transaction (or, in the case of the Early Termination Amount, the date of entering into this Agreement), is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;