

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## **2012 ISDA U.S. Municipal Reference Entity Supplement to the 2003 ISDA Credit Derivatives Definitions (published on March 5, 2012)<sup>1</sup>**

Any or all of the following definitions and provisions may be incorporated into a document by wording in the document indicating that, or the extent to which, the document is subject to the 2003 ISDA Credit Derivatives Definitions (as published by the International Swaps and Derivatives Association, Inc. ("ISDA")), as supplemented by (i) the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restricting Supplement to the 2003 ISDA Credit Derivatives Definitions (the "**July 2009 Supplement**" and, collectively with the 2003 ISDA Credit Derivatives Definitions, the "**Definitions**") and (ii) this 2012 ISDA U.S. Municipal Reference Entity Supplement to the 2003 ISDA Credit Derivatives Definitions (this "**March 2012 Supplement**"). All definitions and provisions of this March 2012 Supplement so incorporated in a document will be applicable to such document unless otherwise provided in such document, and any term defined in this March 2012 Supplement and used in any definition or provision that is incorporated by reference in a document will have the meaning set forth in this March 2012 Supplement unless otherwise provided in such document. Any term used in a document will, when combined with the name of a party, have meaning with respect to the named party only.

If the parties have specified that this March 2012 Supplement is applicable, the following provisions shall apply for purposes of the relevant Credit Derivative Transaction.

I. Article I of the Definitions is hereby amended as follows:

1. Section 1.8(a)(ii)(A)(I)(2) is hereby amended by adding the following after the words "is not a Restructuring" and before "; and":

"with respect to a Credit Derivative Transaction for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is specified in the related Confirmation"

2. Section 1.8(a)(ii)(A)(II)(1)(z) is hereby amended by adding the following after the words "is a Restructuring" and before "; and":

"with respect to a Credit Derivative Transaction for which either "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is specified in the related Confirmation"

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<sup>1</sup> The definitions and provisions of the March 2012 Supplement may be incorporated into the relevant Confirmation (including a Confirmation in electronic form) by wording in the relevant Confirmation indicating that, or the extent to which, the definitions and provisions of the March 2012 Supplement are incorporated by reference therein.

3. Section 1.8(a)(ii)(B)(I)(2) is hereby amended by adding the following after the words “is not a Restructuring” and before “;”:

“with respect to a Credit Derivative Transaction for which either “Restructuring Maturity Limitation and Fully Transferable Obligation Applicable” or “Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable” is specified in the related Confirmation”

II. Article II of the Definitions is hereby amended as follows:

1. Section 2.2(h) is hereby amended by adding the following sentence at the end of the first paragraph thereof:

“Notwithstanding the foregoing, in the event that Revenue Obligation Liability is specified as an Obligation Characteristic or Deliverable Obligation Characteristic, “Successor” shall mean an entity or public official that (a) succeeds to the principal functions of, or powers and duties granted to, the Reference Entity with respect to the project, program or other enterprise from which revenues are derived for the payment, in whole or in part, of the Reference Obligation, and (b) assumes the Reference Obligation.”

2. Section 2.19(b) is hereby amended by :

(1) deleting the word “and” after the word “Listed” in the introductory paragraph thereof and inserting a comma in lieu thereof.

(2) adding “, Full Faith and Credit Obligation Liability, General Fund Obligation Liability and Revenue Obligation Liability” after “Not Domestic Issuance,” in the introductory paragraph thereof.

3. Section 2.19(b)(i)(A) is hereby deleted in its entirety and replaced with the following :

““Not Subordinated” means an obligation (or, in the case of a Double-Barrel Obligation Liability, only the Full Faith and Credit Component thereof) that is not Subordinated (in the case of a Revenue Obligation Liability, with respect to the revenues from which the Reference Obligation is payable) to (I) the Reference Obligation (or, if the Reference Obligation is a Double-Barrel Obligation Liability, only the Full Faith and Credit Component thereof) or (II) if no Reference Obligation is specified in the related Confirmation, any unsubordinated Borrowed Money obligation of the Reference Entity; provided that, (x) if any of the events set forth under Section 2.30(a) has occurred with respect to all of the Reference Obligations or if Section 2.2(d) is applicable with respect to the Reference Obligation (each, in each case, a “Prior Reference Obligation”) and no Substitute Reference Obligation has been identified for any of the Prior Reference Obligations at the time of the determination of whether an obligation satisfies the “Not Subordinated” Obligation Characteristic or Deliverable Obligation Characteristic, as applicable, “Not Subordinated” shall mean an obligation that would not have been Subordinated to such Prior Reference Obligation, and (y) if “Double-Barrel Obligation Only” is specified as

applicable in the related Confirmation (and it will only be deemed to be applicable if the Reference Obligation is a Double-Barrel Obligation Liability), then an obligation will be deemed to satisfy the “Not Subordinated” Obligation Characteristic or Deliverable Obligation Characteristic only if (I) such obligation is a Double-Barrel Obligation Liability and (II) in addition to satisfying the foregoing requirements in this paragraph, the Non-Full Faith and Credit Component of such obligation is not Subordinated to the Non-Full Faith and Credit Component of such Reference Obligation (assuming solely for purposes of this clause (y) that any reference in the definition of “Subordination” to the “Reference Entity” will be deemed to be to the “Sovereign Agency of the Reference Entity” if such Non-Full Faith and Credit Component is a direct liability of a Sovereign Agency of such Reference Entity. For purposes of determining whether an obligation satisfies the “Not Subordinated” Obligation Characteristic or Deliverable Obligation Characteristic, the ranking of each Reference Obligation or each Prior Reference Obligation, as applicable, shall be determined as of the date as of which the relevant Reference Obligation or Prior Reference Obligation, as applicable, was issued or incurred, and shall not reflect any change to such ranking after such date.”

4. Section 2.19(b)(i)(B) is hereby amended by adding the following sentence at the end thereof:

“Notwithstanding the foregoing, a Full Faith and Credit Obligation Liability of a Reference Entity that is payable, in whole or in part, from ad valorem taxes (where the amount of such taxes that may be levied is subject to applicable constitutional, statutory and other legal limits) shall be deemed to be Subordinated to any Full Faith and Credit Obligation Liability of such Reference Entity that is payable, in whole in part, from ad valorem taxes that are not so limited.”

5. Section 2.19(b)(vi) is amended by deleting the word “and” at the end of the clause.
6. Section 2.19(b)(vii) is amended by adding a “;” at the end thereof.
7. Article II is hereby amended by adding a new Section 2.19(b)(viii) as follows:

“(viii) (A) “Full Faith and Credit Obligation Liability” means any liability of the Reference Entity:

(I) the payment of which in accordance with its terms or applicable law is backed by the “full faith and credit” (or similar language) of the Reference Entity; or

(II) that is payable from ad valorem taxes required to be levied on all taxable property within the taxing jurisdiction of the Reference Entity for the payment thereof, whether or not subject to any applicable constitutional, statutory and other legal limits with respect to the amount of such taxes that may be so levied.

For the avoidance of doubt, a Double-Barrel Obligation Liability shall also constitute a Full Faith and Credit Obligation Liability.

(B) “Double-Barrel Obligation Liability” means, with respect to any Reference Entity, any liability that evidences both (I) a Full Faith and Credit Obligation Liability of such Reference Entity (either directly or as a provider of a Qualifying Guarantee) and (II) a claim that is either (x) payable from certain revenues or other sources of funds of such Reference Entity prior to any claim under a Full Faith and Credit Obligation Liability that is not payable from such revenues or sources of funds or (y) is payable from certain revenues or other source of funds of a Sovereign Agency of such Reference Entity. For the avoidance of doubt, a Double-Barrel Obligation Liability that is a direct liability of a Sovereign Agency of the Reference Entity (rather than the Reference Entity itself) will be deemed to be a “Qualifying Guarantee” of such Reference Entity if such Full Faith and Credit Component is a liability of such Reference Entity that in accordance with its terms cannot be discharged, reduced or otherwise altered or assigned (other than by operation of law) as a result of the occurrence or non-occurrence of an event or circumstance (other than payment).

(C) “Full Faith and Credit Component” means any liability of the Reference Entity (either directly or as a provider of a Qualifying Guarantee) in respect of a Double-Barrel Obligation Liability without regard to any claim thereunder described in clause (II) of the definition thereof.

(D) “Non-Full Faith and Credit Component” means any liability of the Reference Entity or any Sovereign Agency thereof in respect of a Double-Barrel Obligation Liability other than in respect of the Full Faith and Credit Component thereof.”

8. Article II is hereby amended by adding a new Section 2.19(b)(ix) as follows:

“(ix) (A) “General Fund Obligation Liability” means any liability of the Reference Entity that is payable from the general fund of the Reference Entity and that is not a Moral Obligation Liability. For the avoidance of doubt, a Full Faith and Credit Obligation Liability that is payable from the general fund of the Reference Entity shall also constitute a General Fund Obligation Liability;

(B) “Moral Obligation Liability” means any liability of the Reference Entity that is contingent upon an appropriation being made by the governing body or other official of the Reference Entity; and”

9. Article II is hereby amended by adding a new Section 2.19(b)(x)as follows:

“(x) “Revenue Obligation Liability” means any liability of the Reference Entity that is payable, in whole or in part, from the same source of revenues as the Reference Obligation and that is not a Moral Obligation Liability.”

10. Section 2.20(b) is hereby amended as follows:
  - (1) deleting the word “and” after the phrase “Accelerated or Matured” in the introductory paragraph thereof and inserting a comma in lieu thereof.
  - (2) adding “, Full Faith and Credit Obligation Liability, General Fund Obligation Liability and Revenue Obligation Liability” after “Not Bearer” in the introductory paragraph thereof.
11. Section 2.30(a) is hereby amended as follows:
  - (1) adding “or defeased” after “redeemed”.
  - (2) adding “in accordance with its terms” after “in whole” in the first line thereof.
13. Section 2.30(b) is hereby amended as follows:
  - (1) deleting the words “ranks pari passu with the ranking of each of the Substitute Reference Obligation and such Reference Obligation (with the ranking in priority of payment of such Reference Obligation being determined as of the date as of which such Reference Obligation was issued or incurred and not reflecting any change to such ranking in priority of payment after such date)” in clause (i) of the first sentence thereof and replacing it with the following:

“(i) satisfies the “Not Subordinated” Obligation Characteristic”
  - (2) deleting “and” after “Credit Derivative Transaction” in clause (ii) of the first sentence thereof and inserting a comma in lieu thereof.
  - (3) adding the following words at the end of the first sentence thereof:

“and (iv) is a Full Faith and Credit Obligation Liability (if Full Faith and Credit Obligation Liability is specified as an Obligation Characteristic in the related Confirmation), is a General Fund Obligation Liability (if General Fund Obligation Liability is specified as an Obligation Characteristic in the related Confirmation), or is a Revenue Obligation Liability (if Revenue Obligation Liability is specified as an Obligation Characteristic in the related Confirmation).”

III. Article III of the Definitions is hereby amended as follows:

1. Section 3.5(a) is hereby amended as follows:
  - (1) adding “, or a Sovereign in respect of a Reference Entity which is a Sovereign Agency” after “or a Sovereign Agency in respect of a Reference Entity which is a Sovereign” in clause (ii)(A) thereof.
  - (2) inserting “(A)” after “or filed with” in clause (iv) thereof.
  - (3) adding the following words at the end of clause (iv) thereof:

“or (B) the Electronic Municipal Market Access (EMMA) system of the Municipal Securities Rulemaking Board, or any additional or successor filing system approved by the United States Securities and Exchange Commission for satisfying continuing disclosure requirements under the Securities and Exchange Act of 1934, as amended, or any rules promulgated thereunder, that are applicable to any securities issued by the Reference Entity.”

2. Section 3.7 is hereby amended by inserting “the Bond Buyer, ” after “Dow Jones News Wire, ”.

IV. Article VIII of the Definitions is hereby amended as follows:

1. Section 8.7(b)(i) is hereby amended as follows:
  - (1) deleting the words “such Obligation’s yield to maturity is not specified in, nor implied from,” in the 14<sup>th</sup> line thereof; and
  - (2) adding the words “do not express any method of accretion” after the words “the terms of such Obligation” in the 14<sup>th</sup> and 15<sup>th</sup> line thereof;
2. Section 8.7(b)(ii) is hereby deleted in its entirety and replaced with the following:

““Accreting Obligation” means any obligation with an original issue price that is less than 95%.”

V. Article IX of the Definitions is hereby amended as follows:

1. Section 9.1(c)(iii) is hereby amended by adding “and the 2012 ISDA U.S. Municipal Reference Entity Supplement to the 2003 ISDA Credit Derivatives Definitions published by ISDA on March 5, 2012” after “ISDA on July 14, 2009”; and
2. Each of Sections 9.10(a) and Section 9.10(b) is hereby amended by deleting the words “and such instrument shall be deemed specified in the Notice of Physical Settlement or any NOPS Amendment Notice, as applicable” and replacing them with (a) in the case of Section 9.10(a), the words “and such instrument shall be deemed specified in a NOPS Amendment Notice that is effective on the date immediately prior to the most recent London Business Day preceding such Delivery and in which the Replaced Deliverable Obligation Outstanding Amount shall be the Outstanding Amount of the replaced Loan” and (b) in the case of Section 9.10(b), the words “and such instrument shall be deemed specified in a NOPS Amendment Notice that is effective on the date on which Seller notifies Buyer of the Bond or Loan that Seller will require Buyer to Deliver and in which the Replaced Deliverable Obligation Outstanding Amount shall be the Outstanding Amount of the replaced Loan”.

- VI. If the parties have specified that this March 2012 Supplement is applicable, the relevant Credit Derivative Transaction will be deemed to incorporate the definitions and provisions of the July 2009 Supplement to the extent such July 2009 Supplement is not otherwise incorporated into the relevant Credit Derivative Transaction.

VII. The Definitions are hereby amended by adding the following to Exhibit C to the Definitions:

“and the 2012 ISDA U.S. Municipal Reference Entity Supplement to the 2003 ISDA Credit Derivatives Definitions (published on March 5, 2012)” on the last line in the second paragraph after “(published on July 14, 2009)”