

Summary of Key Changes in European Loan CDS Documentation (July 2007 Version to March 2008 Version).

(May 2008)

This note highlights the key changes made from the Original European CDS on Loans Terms to the New European CDS on Loans Terms (as those terms are defined below). It should be read alongside the detailed provisions of those documents and should not be relied upon as a substitute for them. Users should take appropriate legal advice.

The ISDA European Loan CDS Protocol (the **Protocol**) is a tool to upgrade the Standard Terms Supplement and Form of Confirmation for Credit Derivative Transactions on Leveraged Loans as published by the International Swaps and Derivatives Association (**ISDA**) on 30 July, 2007 (the **Original European CDS on Loans Terms**) to the equivalent documents published on March 12, 2008 (the **New European CDS on Loans Terms**).

The Protocol provides that with effect from the Implementation Date (1 May 2008), each provision in the documentation relating to each Covered Transaction (as defined in the Protocol) that incorporates the Original European CDS on Loans Terms will be automatically deleted and replaced with a provision incorporating the New European CDS on Loans Terms. Parties adhering to the Protocol and amending their Covered Transactions in this way will therefore not be required to amend documentation bilaterally to effect the relevant changes.

Terms used but not defined in this note have the meanings given to them in the New European CDS on Loans Terms.

Substantive Amendments

The main substantive changes made in the New European CDS on Loans Terms are as follows:

(a) **Substitute Reference Obligations**

The method for identifying Substitute Reference Obligations in the Original European CDS on Loans Terms has been altered in the New European CDS on Loans Terms so that it is broadly consistent with the approach now taken in the iTraxx® LevX® Standard Terms Supplement for use with Credit Derivatives Transactions on Leveraged Loans published by ISDA on 12 March, 2008.

Under the Original European CDS on Loans Terms, it was the responsibility of the Calculation Agent to identify any Substitute Reference Obligation in accordance with the procedure set out in Section 2.30 of the 2003 ISDA Credit Derivatives Definitions (the **Definitions**) (as amended by the Original European CDS on Loans Terms). The mechanics of Section 2.30 in the New European CDS on Loans Terms remain substantially the same as they were under the Original European CDS on Loans Terms; however, the decision-making process has been substantially amended and the New European CDS on Loans Terms must, for these purposes, be read in conjunction with the Markit RED Continuity Procedures for European LCDS (the **Continuity Procedures**) published by Markit Group Limited (the **Index Publisher**), which are available from Markit's website: <http://www.markit.com/information/products/category/indices/levx/documentation.html>. Under the Continuity Procedures, upon a potential Refinancing, any dealer in possession of relevant information may submit such information to a law firm (the **Designated Law Firm**) which will produce an interim summary (the **Interim Summary**) setting out its determinations based on the information provided to it, which will be published by the Index Publisher on or before the 80th calendar day following the potential Refinancing.

Under the terms of the New European CDS on Loans Terms, the Calculation Agent will be deemed to have made determinations which are consistent with the determinations set out in the Interim Summary on the 100th calendar day following the potential Refinancing (the **Substitute Reference Obligation Long-Stop Date**) unless (i) a final summary (the **Final Summary**) which is not consistent with the determinations set out in such Interim Summary is

published by the Index Publisher on or before such day or (ii) information (**Disputing Information**) disputing the conclusions set out in such Interim Summary is provided by any party to each other party on or before the tenth calendar day after the publication of such Interim Summary.

In the case of (i) above, even if the Calculation Agent has received Disputing Information that is not consistent with the determinations set out in the Final Summary, the Calculation Agent will have been deemed to have made determinations which are consistent with the determinations set out in the Final Summary on the Substitute Reference Obligation Long-Stop Date.

In the case of (ii) above, or if (a) the Reference Obligations are not included in the Markit™ RED™ LCDS Database for European Leveraged Loans or (b) no Interim Summary is published by the Index Publisher on or before the 80th calendar day following Refinancing, the Calculation Agent will make the relevant determinations pursuant to Section 2.30 of the Definitions (as amended by the New European CDS on Loans Terms).

(b) Cancellation

Under the New European CDS on Loans Terms, if the relevant Confirmation states that “Continuity” is Not Applicable then under the New European CDS on Loans Terms, it remains for the Calculation Agent to determine if all the funded portion of the Reference Obligations are redeemed, repaid or otherwise discharged in full and if no commitments attributable to the Reference Obligations are available for utilisation under the Reference Credit Agreement (a **Cancellation**).

However, if the relevant Confirmation states that “Continuity” is Applicable and a Cancellation occurs, then a process similar to that described in (a) (*Substitute Reference Obligations*) above will apply with respect to publication of an Interim Summary and Final Summary and provision of Disputing Information.

(c) Deliverable Obligations – Specified Currency

Under the Original European CDS on Loans Terms, Deliverable Obligations were limited to Reference Obligations and Senior Loans satisfying the Specified Currency Deliverable Obligations Characteristic (as amended therein). This Deliverable Obligation Characteristic has been removed in the New European CDS on Loans Terms and as a result, all Reference Obligations and Senior Loans will be Deliverable Obligations.

(d) Cash Settlement Option – Buyer/Seller obtains Quotations

The Original European CDS on Loans Terms allowed the parties to specify that the Seller and/or the Buyer (rather than the Calculation Agent) could obtain Quotations and determine the Final Price. The New European CDS on Loans Terms does not include this possibility.

(e) Rebate Amount

Some market participants had expressed a concern that if a Cancellation occurred, under the Original European CDS on Loans Terms the date on which the Reference Obligation Notional Amount was reduced to zero could be immediately prior to a Fixed Rate Payer Payment Date and that as a result a Buyer under a European LCDS Transaction would not have sufficient time to amend the relevant payment requests to reduce the Fixed Amount payable in respect of that Fixed Rate Payer Fixed Amount Calculation Period. To address this concern, a new mechanism has been added pursuant to which, if the relevant Reference Obligation Notional Amount would otherwise have been reduced to zero ten Business Days or less prior to a Fixed Rate Payer Payment Date, the Reference Obligation Notional Amount will be deemed to instead be reduced on the Fixed Rate Payer Payment Date and an amount equal to the Rebate Amount (representing the portion of the Fixed Amount paid by the Buyer in relation to the period between the date on which the Reference Obligation Notional Amount would otherwise have been reduced to zero and the Fixed Rate Payer Payment Date) will subsequently be payable from Seller to Buyer.

Hardwiring of Certain Elections

In addition to the changes summarised above, the following elections which were previously required to be made in the relevant Confirmation pursuant to the Original European CDS on Loans Terms have now been hardwired into the Standard Terms Supplement of the New European CDS on Loans Terms:

- (a) Business Days are now specified in the Standard Terms Supplement as "London and TARGET";
- (b) Fixed Rate Payer Payment Dates are now specified as being the 20 March, 20 June, 20 September and 20 December in each year (subject to certain exceptions).

Clarification

Some clarificatory changes have also been made; in particular:

- (a) Restructuring

Under the Definitions, none of the heads of Restructuring contained in Section 4.7(a)(i) to (v) will constitute a Restructuring if they fall within the circumstances set out in Section 4.7(b)(i) to (iii) (for example if such circumstance does not directly or indirectly result from a deterioration in the creditworthiness or financial condition of the Reference Entity). The definition of Restructuring has been amended in the European Loan CDS Terms to clarify that the new head of restructuring which has been added, namely the release of all assets, will also not constitute a Restructuring if it falls within Section 4.7(b)(i) to (iii).

- (b) Ranking

A clause has been added to clarify that the Ranking designation in the relevant Confirmation is included for the purposes of information only and that Reference Obligations which are specified in the relevant Confirmation constitute Reference Obligations even if they are not consistent with the Ranking designation. Similarly, if no Reference Obligation is included in the relevant Confirmation, each tranche or facility which constitutes a Loan under the Reference Credit Agreement as at the Trade Date will be a Reference Obligation, regardless of the Ranking designation set out in the Confirmation.