



**ISDA Credit Operations: Documentation updates to incorporate the July 2009 Supplement/Small Bang Protocol provisions (FAQ)**

Revised as of March 4, 2011

ISDA has prepared this brief summary of frequently asked questions to assist in your consideration of the CDS documentation updates to reflect the changes made by the Small Bang Protocol for CDS Transactions entered into after 31 January 2011. **THIS FREQUENTLY ASKED QUESTIONS DOES NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE CDS DOCUMENTATION UPDATES OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING THE UPDATED DOCUMENTATION. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.**

**Questions and Answers:**

1. Why is there a need to make updates to existing documentation?

*A: As part of the development of the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement CDS Protocol and the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring CDS Protocol (the "Small Bang Protocol") (the "Protocols"), it was anticipated that it would require significant time to update and republished all the existing forms of documentation for Protocol Covered Transactions to incorporate the changes that were made by the Protocols (principally, under the Small Bang Protocol, the incorporation of the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the Definitions (the "July 2009 Supplement", which established the Credit Derivatives Determinations Committees and Auction Settlement for all Credit Events). Therefore, in addition to applying the Protocols to legacy Transactions, coverage was extended to future Protocol Covered Transactions entered into between Adhering Parties. To avoid this forward-looking provision from applying indefinitely, it was subject to a cut-off date, being January 31, 2011 (the "Protocol Expiration Date").*

2. Does this expiration affect trades which I entered into prior to January 31, 2011?

*A: No. Protocol Covered Transactions entered into on or prior to January 31, 2011 are not affected; those trades are still amended by the terms of the Protocols. Rather, this change impacts Transactions entered on or after February 1, 2011.*

3. Will my firm have to renegotiate MCAs in order to incorporate the provisions of the Protocols?

*A: Transactions subject to a Master Confirmation Agreement ("MCA") entered into prior to January 31, 2011 (a "pre-expiration MCA") between parties who adhered to the Protocols are still deemed to be amended by the terms of the Protocols. The DC published a decision ("DC Decision 120310") to clarify that these MCAs are amended in perpetuity, and are not subject to the January 31, 2011 Protocol Expiration Date. A copy of DC resolution 120310 can be found here: <http://www.isda.org/dc/view.asp?issuenum=2010120201>*

Capitalised terms have the meaning given to them in the relevant ISDA definitional booklet. The precise documentation of each Transaction remains the responsibility of the parties concerned. ISDA assumes no responsibility for any use to which this Questions and Answers document may be put. Each party following the recommendations contained in this Questions and Answers document should satisfy itself that those recommendations are appropriate to reflect the commercial intentions of the parties.

#### 4. What documentation will not be impacted?

*A1: Documentation that has already been republished to reflect the terms of the Small Bang Protocol (See Appendix).*

*A2: The following credit derivative transactions which were excluded from the scope of the Protocols will not be amended to incorporate the provisions of the Small Bang Protocol unless the parties bilaterally agree:*

*Loan Only transactions;*

*U.S. Municipal type transactions;*

*Credit derivative transactions on asset backed securities; and*

*Index transactions entered into between two of the main dealers (listed in the Protocol) relating to trust certificates linked to any Dow Jones CDX.NA.HY Index or CDX.NA.HY Index.*

*Transactions documented under the 1999 ISDA Credit Derivative Definitions*

#### 5. What documentation will be republished, and what effect does this have on my actual confirmations?

*A. Parties intending to incorporate the July 2009 Supplement and the other relevant terms of the Small Bang Protocol in their transactions with a Trade Date on or after February 1, 2011 will need to ensure they are referencing documentation which has been republished to include these terms (See Appendix for a list of republished documentation).*

#### 6. What if a form of documentation has not yet been republished and I do a trade on or after February 1, 2011?

*The current forms of documentation for the more common types of transaction (including all those that are eligible for electronic Confirmation in the warehouse) have been republished by January 31, 2011. However, for some less frequently-traded types of credit derivative transaction or for non-current forms of documentation (including Master Confirmation Agreements that have been replaced by a Standard Terms Supplement or the Credit Derivatives Physical Settlement Matrix), the form of documentation may not have been updated. If a form has not yet been republished and parties enter into related Transaction(s), the parties will need to execute a form of Confirmation that is either bilaterally updated, or deemed to be updated, in accordance with the terms of the Small Bang Protocol (assuming they intend those terms to apply). To assist parties in bilaterally updating a template, language has been suggested for agreement at an industry level to include in a form of Confirmation that has not yet been republished in order to incorporate the relevant changes published in Schedule 1 to the Small Bang Protocol.*

Impacted Confirmations are:

- First to Default Confirmation
- Nth to default Confirmation
- Contingent CDS Confirmation

Note: The original language published on January 28, 2011 was subsequently amended to allow parties to document CDX or iTraxx tranche transactions referencing the Index Loss at Maturity Additional Provisions. This updated language is shown below. Subsequent to ISDA amending this language, the Index Loss at Maturity Additional Provisions have been updated.

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Proposed Language:

If the transaction documented by this Confirmation is a Covered Index Transaction, a Single Name CDS Transaction, a First to Default Transaction, an Nth to Default Transaction, a Recovery Lock Transaction or a Bespoke Portfolio Transaction, each as defined in the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring CDS Protocol as published by ISDA on July 14, 2009 (the "**July 2009 Protocol**"), then the parties agree that such transaction shall be deemed to be a Protocol Covered Transaction for purposes of the July 2009 Protocol and the Amendment Effective Date for purposes of the July 2009 Protocol shall be deemed to be the Trade Date of such transaction, provided that if this Confirmation, any standard terms supplement incorporated into this Confirmation or any annex or additional provisions to any such standard terms supplement is based on a form of Confirmation, standard terms supplement, annex or additional provisions, as applicable, published on or after July 27, 2009 the provisions of such Confirmation, standard terms supplement, annex or additional provisions, as applicable, will prevail over the provisions of the relevant Part of Schedule 1 that would otherwise apply to such Confirmation, standard terms supplement, annex or additional provisions, as applicable.

A separate version of the language has been prepared for use with Master Confirmation Agreements ("MCAs") entered into on or after February 1, 2011. Proposed Language for MCAs:

If a transaction documented under this Master Confirmation Agreement is a Single Name CDS Transaction, a Covered Index Transaction or a Bespoke Portfolio Transaction, each as defined in the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring CDS Protocol as published by ISDA on July 14, 2009 (the "**July 2009 Protocol**"), then the parties agree that such transaction shall be deemed to be a Protocol Covered Transaction for purposes of the July 2009 Protocol and the Amendment Effective Date for purposes of the July 2009 Protocol shall be deemed to be the Trade Date of such transaction.

7. What if a form of documentation has not yet been republished and I do a novation on or after February 1, 2011?

*For Transactions with a Novation Trade Date on or after February 1, 2011 on one of the types of transaction above for which the form of documentation has not been updated or if the parties prefer to attach the Old Confirmation, ISDA will publish an updated form of Novation Confirmation on January 31, 2011 that includes language to incorporate the relevant provisions of the Small Bang Protocol. MarkitSERV has updated its operating procedures to reflect this language so that Transactions novated via MarkitSERV are also subject to the relevant provisions of the Small Bang Protocol. Please see here for more information on the operating procedure changes: [\[MarkitSERV Important Notice MS#78 ; TIW#104\]](#)*

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## APPENDIX

Type	Republished?	Republication Date
Single Name CDS (Matrix referencing the Matrix 2003 ISDA Credit Derivative Definitions)	Yes	27-Jul-09
Single Name CDS Swaption	Yes	20-Jan-11
Fixed Recovery CDS	Yes	24-Sep-10
Global Bespoke Tranche	Yes	1-Feb-11
CDX.NA.IG/HY/XO Untranchéd	Yes	31-Jan-11
CDX.NA.IG/HY/XO Tranchéd	Yes	31-Jan-11
CDX.NA.IG/HY/XO Untranchéd Swaption	Yes	31-Jan-11
CDX.EM Untranchéd	Yes	31-Jan-11
iTraxx Europe Tranchéd	Yes	23-Nov-09
iTraxx Europe Untranchéd	Yes	23-Nov-09
iTraxx Europe Swaption	Yes	23-Nov-09
iTraxxSovX	Yes	September 28, 2009 amended May 4, 2010
iTraxx Asia-Ex Japan Untranchéd	Yes	25-Nov-10
iTraxx Asia-Ex Japan Tranchéd	Yes	25-Nov-10
iTraxx Japan Untranchéd	Yes	25-Nov-10
iTraxx Japan Tranchéd	Yes	25-Nov-10
iTraxx Australia Untranchéd	Yes	25-Nov-10
iTraxx Australia Tranchéd	Yes	25-Nov-10
Novation Confirmation	Yes	31-Jan-11
Single Name CDS (MCA - referencing 2003 ISDA Credit Derivative Definitions )	No	Will not be republished
Recovery Lock CDS	Yes	2-Mar-11
Contingent Credit Default Swap	No	PENDING
First to Default	No	PENDING
Nth to Default	No	PENDING
Global Bespoke Tranche Annexes	No	PENDING
Index Loss at Maturity Additional Provisions (CDX & iTraxx)	No	PENDING
CDX.EM Diversified Untranchéd	No	Will not be republished
CDX.EM Diversified Tranchéd	No	Will not be republished
iTraxx SDI-75 Untranchéd Dealer/Non-Dealer	No	Will not be republished
iTraxx Tranchéd Blended Indices	No	Will not be republished

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