



International Swaps and Derivatives Association, Inc.

ISDA EUROPEAN LOAN CDS PROTOCOL

published on May 1, 2008
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (**ISDA**) has published this ISDA European Loan CDS Protocol (this **Protocol**) to enable parties to Covered Transactions to amend the terms of such Covered Transactions.

Accordingly, a party that has entered into a Covered Transaction 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.

1. Amendments

By adhering to this Protocol in the manner set forth in paragraph 2 below, a party (an **Adhering Party**) that wishes to amend the terms of a Covered Transaction, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, agrees that the terms of each Covered Transaction, if any, between it and each other Adhering Party will be amended with effect from the Implementation Date in accordance with the terms of Schedule 1 hereto.

2. Adherence and Effectiveness

- (a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with paragraph 5(e) below, to ISDA, as agent, of an Adherence Letter on or before May 15, 2008 or such later date designated by ISDA falling no later than May 31, 2008 (in either case, the **Cut-off Date**). ISDA may designate a date later than May 15, 2008 as the Cut-off Date by notice given no later than May 15, 2008 on the "ISDA European Loan CDS Protocol" section of its website at www.isda.org (or by other suitable means) if it determines in its absolute discretion that market interest justifies such an extension to the adherence period. 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 other appropriate officer) of ISDA will be deemed to be an original.
- (b) The agreement to make the amendments contemplated by this Protocol, on the terms and subject to the conditions set forth in this Protocol, will, as between any two Adhering Parties, be effective on the date of receipt by ISDA, as agent, of an Adherence Letter from the later of the Adhering Parties to adhere. Any such amendments will apply to each Covered Transaction between the Adhering Parties.
- (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 that Covered Transaction and the Governing ISDA 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 Protocol will be void and ISDA will inform the relevant party of such fact as soon as reasonably possible after making such determination.

3. Representations

Each Adhering Party represents to each other Adhering Party with which it has or may have entered into a Covered Transaction, on the date on which the later of them adheres to this Protocol in accordance with paragraph 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 Governing ISDA 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 Governing ISDA 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 Governing ISDA 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 Governing ISDA 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, reorganisation, 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 Governing ISDA Master Agreement.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Governing ISDA 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 Governing ISDA Master Agreement entered into prior to the Implementation Date 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 elsewhere in this Protocol or in Schedule 1) 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 any Covered Transaction, all terms and conditions of each Covered Transaction will continue in full force and effect in accordance with the provisions of its Confirmation as in effect immediately prior to the Implementation Date. 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 each Covered Transaction between the Adhering Parties notwithstanding Section 9(a) (or in the case of an ISDA Master Agreement that is a 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), Section 8(a)) of the Governing ISDA Master Agreement.

- (b) ***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 Governing ISDA Master Agreement and then only with effect between the parties to the Governing ISDA Master Agreement (and will only be effective to amend or override the provisions contained in paragraph 1 of this Protocol and Schedule 1 to this Protocol if it expressly refers in writing to this paragraph 5(b) of this Protocol and would otherwise be effective in accordance with Section 9(b) (or in the case of an ISDA Master Agreement that is a 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), Section 8(b)) of the Governing ISDA Master Agreement in effect between the parties).

- (c) ***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.

- (d) ***Governing Law.*** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Covered Transaction between them, be governed by and construed in accordance with English law and the amendments to each Covered Transaction shall be governed by and construed in accordance with the law specified to govern that Covered Transaction and otherwise in accordance with applicable choice of law doctrine.

- (e) **Notices.** Any Adherence Letter must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at elcdsupupdateprotocol@isda.org and will be deemed effectively delivered on the date it is delivered unless on the date of that delivery ISDA's New York 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 ISDA's New York 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

As used in this Protocol, **Credit Support Document** and **Transaction** each has the meaning given that term in the related Governing ISDA Master Agreement and **Credit Derivative Transaction** has the meaning given to such term in the 2003 ISDA Credit Derivative Definitions, as published by ISDA (the **Credit Derivatives Definitions**). Each capitalised term used in this Protocol or Schedule 1 but not defined herein or therein has the meaning given that term in the Credit Derivatives Definitions.

References in this Protocol and Schedule 1 to the following terms have the meaning indicated below:

Confirmation means, in relation to a Covered Transaction between two Adhering Parties, each document or other confirming evidence exchanged between the parties or otherwise effective for the purpose of confirming or evidencing the Covered Transaction.

Covered Transaction means each Old European Loan CDS Transaction and each option to enter into an Old European Loan CDS Transaction, in each case in respect of which each of the parties is an Adhering Party, provided that a Transaction that is an Excluded Transaction shall not be a Covered Transaction.

Documentation means the Governing ISDA Master Agreement, Standard Terms Supplement and Confirmation relating to a Covered Transaction.

Excluded Transaction means a Credit Derivatives Transaction in respect of which an Event Determination Date (as defined in the Documentation relating to such Credit Derivative Transaction) has occurred prior to the Implementation Date in respect of the parties to such Credit Derivatives Transaction.

Governing ISDA Master Agreement means, in respect of a Covered Transaction, the ISDA Master Agreement governing such Covered Transaction and of which such Covered Transaction forms part, whether executed by the parties thereto or incorporated by reference in the Confirmation relating to such Covered Transaction.

Implementation Date means May 1, 2008.

ISDA 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.

Old European Loan CDS Transaction means a Credit Derivative Transaction evidenced by a Confirmation that incorporates the ISDA Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans as published by the International Swaps and Derivatives Association, Inc. on 30 July 2007.

Standard Terms Supplement means, in relation to a Covered Transaction between two Adhering Parties, the standard terms supplement incorporated by reference into the relevant Confirmation.

EXHIBIT 1
to ISDA European Loans CDS Protocol

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

Send to: elcdsupupdateprotocol@isda.org

Dear Sirs,

ISDA European Loans CDS Protocol - Adherence

The purpose of this letter is to confirm our adherence to the ISDA European Loans CDS Protocol as published by the International Swaps and Derivatives Association, Inc. on May 1, 2008 (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 each Covered Transaction entered into prior to the Implementation Date between us and each other Adhering Party.

1. Specified Terms

The amendments in Schedule 1 of the Protocol shall apply to Covered Transaction to which we are a party in accordance with the terms of the Protocol.

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 a 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. If you are an investment or asset manager and act on behalf of multiple funds, you must indicate in the signature block, "Investment/Asset Manager, acting on behalf of the funds and accounts listed in the relevant Master Agreement between it and another Adhering Party". A separate Adherence Letter for each fund does *not* need to be submitted to ISDA. Further, no specific names of clients of the investment or asset manager will be publicly disclosed on the ISDA website in connection with the Protocol.

SCHEDULE 1

With effect from the Implementation Date, the Documentation relating to each Covered Transaction (which, for the avoidance of doubt, in the case of a Covered Transaction that is an option to enter into an Old European Loan CDS Transaction, shall be the Standard Terms Supplement and Confirmation relating to that Old European Loan CDS Transaction) shall be modified as follows.

- (a) *Incorporation of Standard Terms Supplement.* Each provision in the Documentation relating to each Covered Transaction that incorporates the ISDA Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans as published by the International Swaps and Derivatives Association, Inc. on 30 July, 2007 shall be deleted and replaced with a provision incorporating the ISDA Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans as published by the International Swaps and Derivatives Association, Inc. on 12 March, 2008.
- (b) *Amendments to the Confirmation.* Each election in the Confirmations relating to the Covered Transactions shall remain unchanged provided that the following elections shall be disregarded following the Implementation Date:
 - (i) Business Days;
 - (ii) Fixed Rate Payer Payment Dates;
 - (iii) Additional Currency;
 - (iv) Buyer Obtains Quotations; and
 - (v) Seller Obtains Quotations.

To the extent that any provision of the Credit Derivatives Definitions is inconsistent with the terms of this Schedule 1, the terms of this Schedule 1 shall govern.