



International Swaps and Derivatives Association, Inc.

## 2008 TEMBEC CDS PROTOCOL

published on September 17, 2008

by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published this Tembec CDS Protocol (this "**Protocol**"), to enable parties to Covered Transactions to confirm their intentions in respect of certain matters arising in relation to Tembec Industries Inc. ("**Tembec**").

Accordingly, a party that has entered and/or anticipates entering 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 Section 2 below, a party (an "**Adhering Party**") that has entered and/or anticipates entering into a Covered Transaction agrees, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, that certain amendments will be deemed to be made to the Documentation governing each Covered Transaction between it and any other Adhering Party in accordance with the terms of Schedule 1.

### 2. Adherence and Effectiveness

(a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with the first sentence of Section 5(f) below, to ISDA, as agent, of an Adherence Letter on or before September 26, 2008 (the "**Cut-off Date**").

(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 an 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 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 (whether entered into before, on or after the Cut-off Date).

(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 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.

### **3. Representations**

Each Adhering Party represents to each other Adhering Party with which it has or may have a Covered Transaction, on the date on which the later of them adheres to this Protocol in accordance with Section 2 above and, if then outstanding, in respect of each Covered Transaction between them, that:

(a) **Status.** It (i) 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, (ii) if it otherwise represents its status in or pursuant to the Governing 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 each Covered Transaction, 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 each Covered Transaction, 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 each Covered Transaction, 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, reorganization, 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 a Covered Transaction.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Governing 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 Master Agreement (then or in the future) 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 a Covered Transaction, all terms and conditions of each Covered Transaction will continue in full force and effect in accordance with its provisions on the effective date of that amendment. As used in the Documentation governing each Covered Transaction, the terms "**Transaction**", "**this Transaction**", "**Confirmation**", "**this Confirmation**" and words of similar import will, unless the context otherwise requires, mean the Covered Transaction and related Confirmation as amended pursuant to this Protocol in accordance with the relevant Adherence Letters. 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) of the Governing 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 Master Agreement and then only with effect between the parties to that Governing Master Agreement (and will only be effective to amend or override the provisions contained in Section 1 of this Protocol and Schedule 1 to this Protocol if it expressly refers in writing to this Section 5(b) of this Protocol and would otherwise be effective in accordance with Section 9(b) of the Governing Master Agreement).

(c) **Limited Right to Revoke.** Adherence to this Protocol is irrevocable except that an Adhering Party may, by subsequently delivering to ISDA, as agent, in accordance with the first sentence of Section 5(f) below a notice substantially in the form of Exhibit 2 to this Protocol (a "**Revocation Notice**"), designate a date (an "**Earlier Cut-off Date**") as the last date on which any counterparty may adhere to this Protocol in respect of any Covered Transaction then or in the future between them.

(i) Any designated Earlier Cut-off Date that would otherwise fall on a day that is less than three calendar days following the day on which the Revocation Notice is effectively delivered will be deemed to occur on the day that is three calendar days following the date of effective delivery. Any designated Earlier Cut-off Date that would otherwise fall, after giving effect to the preceding sentence (if applicable), on a day that is not a day on which the New York ISDA office is open will be deemed to occur on the next day the New York ISDA office is open.

(ii) Upon the effective designation of an Earlier Cut-off Date by an Adhering Party, this Protocol will not amend or otherwise affect any Covered Transaction between that Adhering Party and a party which adheres to this Protocol after the day on which that Earlier Cut-off Date occurs or is deemed to occur. The foregoing is without prejudice to (A) any amendment to any Covered Transaction between two Adhering Parties effected pursuant to this Protocol on or before the day on which that Earlier Cut-off Date occurs or is deemed to occur and (B) any amendment effected pursuant to this Protocol to any Covered Transaction entered into after the day on which that Earlier Cut-off Date occurs or is deemed to occur between two Adhering Parties that each adhered to this Protocol on or before the day on which that Earlier Cut-off Date occurs or is deemed to occur, which in each case will be (or continue to be) effective.

(iii) Each Revocation Notice must be delivered in duplicate, 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.

(iv) Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of a Revocation Notice certified by the General Counsel or an appropriate officer of ISDA will be deemed to be an original.

(v) Any purported revocation that ISDA, as agent, determines in good faith is not in compliance with this Section will be void.

(d) **Headings.** The headings used in this Protocol and any Adherence Letter or Revocation Notice 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.

(e) **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 the law specified to govern that Covered Transaction and otherwise in accordance with applicable choice of law doctrine.

(f) **Notices.** Any Adherence Letter or Revocation Notice must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at TembecProtocol@isda.org and will be deemed effectively delivered on the date it is delivered unless on the date of that delivery the New York ISDA 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 the New York ISDA 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, "**Confirmation**", "**Credit Support Document**" and "**Transaction**" each has the meaning given that term in the related Governing Master Agreement and "**Credit Derivative Transaction**" has the meaning given to such term in the 2003 ISDA Credit Derivatives Definitions, as published by ISDA (the "**Credit Definitions**") (except that any credit derivative transaction that incorporates the 1999 ISDA Credit Derivatives Definitions, as published by ISDA, will also be considered a "Credit Derivative Transaction" for purposes of this Protocol). Each capitalized term used in this Protocol or Schedule 1 but not defined herein or therein has the meaning given that term in the related Index Documentation.

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

**"Affected CDX Index"** means each of the indices published by CDS IndexCo LLC or Markit Group Limited containing Tembec, if any.

**"Auction Date"** has the meaning specified in Exhibit 3 hereto.

**"Bespoke Portfolio Transaction"** means any Bespoke Untranch Portfolio Transaction and any Bespoke Tranch Portfolio Transaction.

**"Bespoke Tranch Portfolio Transaction"** means a tranch Credit Derivative Transaction that relates to more than one Reference Entity but which is not a Covered Index Transaction and is not any type of Covered Non-Index Transaction other than a Bespoke Portfolio Transaction.

**"Bespoke Untranch Portfolio Transaction"** means an untranch Credit Derivative Transaction that relates to more than one Reference Entity but which is not a Covered Index Transaction and is not any type of Covered Non-Index Transaction other than a Bespoke Portfolio Transaction.

**"Business Day"** means a day on which commercial banks and foreign exchange markets are generally open to settle payments in New York and London.

**"Constant Maturity Swap Transaction"** means any Portfolio Constant Maturity Swap Transaction and any Single Name Constant Maturity Swap Transaction.

**"Covered CDX Tranch Transaction"** means a tranch Credit Derivative Transaction that relates to an Affected CDX Index and is governed by relevant Index Documentation.

**"Covered CDX Untranch Transaction"** means a Credit Derivative Transaction that is not a Covered CDX Tranch Transaction but relates to an Affected CDX Index and is governed by relevant Index Documentation.

**"Covered Index Transaction"** means Covered CDX Untranch Transaction or Covered CDX Tranch Transaction, other than any Excluded Index Transaction, for which:

- (a) the Effective Date is on or prior to the Default Date;
- (b) the Trade Date is on or prior to the Business Day immediately preceding the Final Price Determination Date;
- (c) the Scheduled Termination Date is on or after the Default Date;
- (d) each of the parties to such Credit Derivative Transaction is an Adhering Party; and
- (e) the Tembec Portion is still outstanding as of the Final Price Determination Date.

**"Covered Non-Index Transaction"** means any Credit Derivative Transaction that (i) is not a Covered Index Transaction or an Excluded Index Transaction, (ii) is not an Excluded Non-Index Transaction, (iii) is a Single Name CDS Transaction, a Constant Maturity Swap Transaction, a Principal Only Transaction, an Interest Only Transaction, a First to Default Transaction, an Nth to Default Transaction, a Recovery Lock Transaction, or a Bespoke Portfolio Transaction, and (iv) for which:

- (a) Tembec is a Reference Entity;
- (b) the Effective Date is on or prior to the Default Date;
- (c) the Trade Date is on or prior to the Business Day immediately preceding the Final Price Determination Date;
- (d) the Scheduled Termination Date is on or after the Default Date;
- (e) each of the parties to such Credit Derivative Transaction is an Adhering Party; and
- (f) as applicable, (i) the Tembec Portion is still outstanding as of the Final Price Determination Date; or (ii) the Termination Date has not occurred as of the Business Day immediately prior to the Final Price Determination Date.

A "Covered Non-Index Transaction" shall also include any Covered Single Name Swaptions and any Covered Portfolio Swaptions.

**"Covered Portfolio Swaption"** means a Portfolio Swaption for which:

- (a) Tembec is a Reference Entity for the purposes of the related Underlying CDS;
- (b) the Trade Date of the Portfolio Swaption is on or prior to the Business Day immediately preceding the Final Price Determination Date;
- (c) the Expiration Date of the Portfolio Swaption is on or after the Final Price Determination Date; and
- (d) each of the parties to such Portfolio Swaption is an Adhering Party.

**"Covered Single Name Swaption"** means a Single-Name Swaption for which:

- (a) Tembec is the Reference Entity for the purposes of the related Underlying CDS;
- (b) the Trade Date of the Single-Name Swaption is on or prior to the Business Day immediately preceding the Final Price Determination Date;
- (c) the Expiration Date of the Single-Name Swaption is on or after the Final Price Determination Date; and
- (d) each of the parties to such Single-Name Swaption is an Adhering Party.

**"Covered Transaction"** means a Covered Index Transaction or a Covered Non-Index Transaction, as applicable.

**"Default Date"** means September 4, 2008.

**"Documentation"** means Index Documentation or Non-Index Documentation, as applicable.

**"Excluded Index Transaction"** means any Credit Derivative Transaction between any two of Bear Stearns Credit Products Inc., Citigroup Global Markets Limited, Credit Suisse International (formerly known as Credit Suisse First Boston International), Deutsche Bank AG, Goldman Sachs International, Lehman Brothers Special Financing Inc., JPMorgan Chase Bank, Merrill Lynch International, Morgan Stanley Capital Services Inc., UBS AG London Branch and UBS Limited in respect of any of the Dow Jones CDX.NA.HY Trust Certificates or CDX.NA.HY Trust Certificates.

**"Excluded Non-Index Transaction"** means (a) any Bespoke Portfolio Transaction that relates to a portfolio of Reference Entities that is also substantially identical to the relevant portfolio for any series of credit linked notes, trust certificates or other similar securities and for which the Adhering Parties intend settlement of any Credit Event to be consistent with the settlement terms applicable to such securities, (b) Reference Obligation Only Transactions, (c) Loan Only Transactions, (d) Preferred CDS Transactions and (e) Fixed Recovery Transactions.

**"Final Price Determination Date"** has the meaning specified in Exhibit 3 hereto.

**"First to Default Transaction"** means a Credit Derivative Transaction linked to more than one Reference Entity pursuant to which Cash Settlement Amounts or Physical Settlement Amounts will only be paid to Buyer after the Conditions to Settlement have been satisfied for the first time in respect of any of the relevant Reference Entities and for which Tembec was designated by the parties as the first to default.

**"Fixed Recovery Transaction"** means a Credit Derivative Transaction in respect of which the Final Price is pre-determined and specified in the relevant Documentation.

**"Governing Master Agreement"** means, in respect of a Covered Transaction, the master agreement governing such Covered Transaction, whether executed by the parties thereto or incorporated by reference in the Confirmation relating to such Covered Transaction.

**"Index Documentation"** means the Governing Master Agreement and (i) in the case of a Covered CDX Untranchured Transaction, a confirmation or master confirmation based on the form published by CDS IndexCo LLC in October 2003, September 2004, March 2007, March 2008, or July 2008 with such modifications to which the parties thereto have agreed or (ii) in the case of a Covered CDX Tranchured Transaction, a confirmation and/or master confirmation (including a confirmation or master confirmation incorporating the standard terms) based on the form published by CDS IndexCo LLC in July 2004, March 2005, June 2005, March 2006 or March 2007 with such modifications to which the parties thereto have agreed.

**"Interest Only Transaction"** means a Credit Derivative Transaction linked to more than one Reference Entity under which Seller pays to Buyer either (a) an upfront amount or (b) a floating interest rate, neither party pays Cash Settlement Amounts during the term of the Transaction and Buyer pays Fixed Amounts to Seller during the term of the Transaction (which amounts are reduced due to Credit Events).

**"Loan Only Transaction"** means a Credit Derivative Transaction in respect of which "Loan" is specified as the only Deliverable Obligation Category.

**"Non-Index Documentation"** means the Governing Master Agreement and a confirmation or master confirmation, as applicable, relating to a Covered Non-Index Transaction.

**"Nth to Default Transaction"** means a Credit Derivative Transaction linked to more than one Reference Entity pursuant to which Cash Settlement Amounts or Physical Settlement Amounts will only be paid to

Buyer after the occurrence of Credit Events in respect of a specified number of Reference Entities and for which Tembec was designated by the parties as the Nth to default.

**"Portfolio Constant Maturity Swap Transaction"** means a Credit Derivative Transaction linked to a portfolio of Reference Entities in respect of which the Fixed Rate is reset at the end of each Fixed Rate Payer Calculation Period to the then-current market rate for the relevant Credit Derivative Transaction.

**"Portfolio Swaption"** means any option to enter into a Covered Transaction (other than another Portfolio Swaption) referencing more than one Reference Entity.

**"Preferred CDS Transaction"** means a Credit Derivative Transaction which contains specific provisions governing preferred securities and similar hybrid securities as Reference Obligations or Deliverable Obligations.

**"Principal Only Transaction"** means a Credit Derivative Transaction linked to more than one Reference Entity under which Seller pays an upfront amount to Buyer, neither party pays any Fixed Amounts or Cash Settlement Amounts during the term of the Transaction and, upon termination of the Transaction, Buyer pays to Seller the notional amount of the transaction, minus aggregate Cash Settlement Amounts.

**"Recovery Lock Transaction"** means a Credit Derivative Transaction in respect of which the Reference Price is specified in the relevant Documentation as a price less than 100 per cent and for which either Buyer or Seller can deliver a Notice of Physical Settlement.

**"Reference Obligation Only Transaction"** means a Credit Derivative Transaction in respect of which "Reference Obligation Only" is specified as the Deliverable Obligation Category.

**"Single Name CDS Transaction"** means a Credit Derivative Transaction linked to not more than one Reference Entity that is not a Single Name Constant Maturity Swap Transaction.

**"Single Name Constant Maturity Swap Transaction"** means a Credit Derivative Transaction linked to not more than one Reference Entity for which the Fixed Rate is reset at the end of each Fixed Rate Payer Calculation Period to the then-current market rate for the relevant Credit Derivative Transaction.

**"Single Name Swaption"** means any option to enter into a credit default swap (other than another Single Name Swaption) referencing not more than one Reference Entity.

**"Tembec Portion"** means, in respect of a Covered Transaction, the portion of such Covered Transaction (or, in respect of a Single Name Swaption or Portfolio Swaption, the portion of the related Underlying CDS) attributable to Tembec.

**"Underlying CDS"** means, in respect of a Single Name Swaption or Portfolio Swaption, the underlying credit default swap transaction to which the relevant option relates.



**Form of Adherence Letter**

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**[Letterhead of Adhering Party]**

**[Date]**

**International Swaps and Derivatives Association, Inc.**  
**Send to: [TembecProtocol@isda.org](mailto:TembecProtocol@isda.org)**

Dear Sirs,

**2008 Tembec CDS Protocol - Adherence**

The purpose of this letter is to confirm our adherence to the 2008 Tembec CDS Protocol, as published by the International Swaps and Derivatives Association, Inc. on September 17, 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 (now or in the future) between us and each other Adhering Party.

**1. Specified Terms**

The amendments in Section 1 and Schedule 1 of this Protocol shall apply to Covered Transactions to which we are a party.

**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. DTCC Account Number**

For purposes of electronic matching and counterparty recognition, our DTCC Account Number is as follows, but you understand and agree that our failure to provide any such details pursuant to this letter will not affect the legal validity and binding nature of the Protocol with respect to us:

DTCC Account Number:

**4. Contact Details**

Our contact details for purposes of this Adherence Letter are:

Name:

Address:

Telephone:

Fax:  
E-mail:

We consent to the publication of the conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]<sup>1</sup>

By:

Name:
Title:
Signature:

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<sup>1</sup> Specify legal name of Adhering Party. If you are an investment or asset manager and act on behalf of multiple funds, you may 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" (or such other language that indicates the funds to which this letter is applicable). 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. However, in order for each Participating Bidder to calculate its Market Position, each such investment or asset manager is required to provide a list of all funds and accounts that it acts on behalf of to each Participating Bidder that has (or whose affiliate has) entered into an ISDA Master Agreement with any of those funds. As provided in Section (1) of Exhibit 3 of the Protocol, on the Business Day prior to the Auction Date, the Administrators will publish a list of the Participating Bidders.

**Form of Revocation Notice**

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**[Letterhead of Adhering Party]**

**[Date]**

**International Swaps and Derivatives Association, Inc.**  
**Send to: TembecProtocol@isda.org**

Dear Sirs,

**2008 Tembec CDS Protocol - Earlier Cut-off Date**

The purpose of this letter is to notify you that we wish to designate as the last date on which any counterparty may adhere to the 2008 Tembec CDS Protocol, as published by the International Swaps and Derivatives Association, Inc. on September 17, 2008 (the "**Protocol**"), in respect of any Covered Transaction (now or in the future) between us the following date (the "**Earlier Cut-off Date**"):

EARLIER CUT-OFF DATE:                    [                    ]

This letter constitutes a Revocation Notice as referred to in the Protocol.

We consent to the publication of the conformed copy of this notice by ISDA on or after the Earlier Cut-off Date and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]<sup>2</sup>

By:

Name:
Title:
Signature:

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<sup>2</sup> Specify legal name of Adhering Party. If you are an investment or asset manager and act on behalf of multiple funds, you may 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" (or such other language that indicates the funds to which this letter is applicable). 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. However, in order for each Participating Bidder to calculate its Market Position, each such investment or asset manager is required to provide a list of all funds and accounts that it acts on behalf of to each Participating Bidder that has (or whose affiliate has) entered into an ISDA Master Agreement with any of those funds. As provided in Section (I) of Exhibit 3 of the Protocol, on the Business Day prior to the Auction Date, the Administrators will publish a list of the Participating Bidders.

### Auction Methodology

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For the purposes of the Protocol of which this Exhibit forms a part, the Final Price for the Deliverable Obligations will be determined according to an auction procedure on the following terms.

- (1) On the Business Day prior to the Auction Date, the Administrators will publish a list of the Participating Bidders.
- (2) During the Initial Bidding Period, each Participating Bidder will be expected to submit to the Administrators a Valid Inside Market Submission and a Dealer Physical Settlement Request and may submit as many Customer Physical Settlement Requests as it receives from its customers; provided that all such Valid Inside Market Submissions and Physical Settlement Requests must satisfy Section 10(g) below. Each Dealer Physical Settlement Request must be, to the best of such Participating Bidder's knowledge and belief, in the same direction as, and not in excess of, its Market Position. Each Customer Physical Settlement Request must be, to the best of the relevant customer's knowledge and belief (aggregated with all Customer Physical Settlement Requests submitted by such customer), in the same direction as, and not in excess of, its Market Position. Each Participating Bidder must accept Customer Physical Settlement Requests from any customer with whom it has a trading relationship, provided such Customer Physical Settlement Request is no larger than, and is in the same direction as, such customer's Dealer-Specific Market Position with respect to that Participating Bidder (or its affiliates). A Participating Bidder may, but is not required to, accept a Customer Physical Settlement Request larger than the relevant customer's Dealer-Specific Market Position in respect of such Participating Bidder (or its affiliates).
- (3) If the Administrators receive at least 8 Valid Inside Market Submissions, the Administrators will determine the "**Inside Market Midpoint**" as follows:
  - (a) The Administrators will sort the Inside Market Bids and Inside Market Offers in the Valid Inside Market Submissions separately, with the Inside Market Bids sorted in descending order and the Inside Market Offers sorted in ascending order. Each Inside Market Bid will then be matched with the corresponding Inside Market Offer (the highest Inside Market Bid being matched with the lowest Inside Market Offer, the second highest Inside Market Bid with the second lowest Inside Market Offer, etc.) (each such Inside Market Bid/Inside Market Offer pair constituting a "**Matched Market**"). For purposes of sorting the Inside Market Bids and Inside Market Offers, where two Inside Market Bids are equal, the one submitted first to the Administrators will be considered to be the lower of the two, and where two Inside Market Offers are equal, the one submitted first to the Administrators will be considered to be the higher of the two.
  - (b) The Administrators will then calculate the mean of the Inside Market Bids and Inside Market Offers included in the Best Half of the Matched Markets that are Non-Tradeable Markets. To identify the Best Half, the Administrators will sort all Non-Tradeable Markets in order of the spread between the Inside Market Bid and Inside Market Offer within each Matched Market, from smallest spread to largest. The Best Half of the Matched Markets are those in the first half of such list. (In the event that the number of Non-Tradeable Markets is an odd number, the Administrators will round up the number

of Matched Markets to include in the Best Half.) The Administrators will then calculate the Inside Market Midpoint by finding the mean of all the Inside Market Bids and Inside Market Offers included in the Matched Markets that fall within the Best Half (with the results rounded to the nearest one eighth of one percent).

- (c) The steps described in (a) and (b) above are illustrated in the following example (which is not intended to reflect indicative prices for the Deliverable Obligations):

Step 1 – Sort Bids from highest to lowest and Offers from lowest to highest.

Contributed		Matched Markets	Sorted		Tradeable Markets Best Half
IM Bids	IM Offers		IM Bids	IM Offers	
39.500%	41.000%		45.000%	34.000%	
40.000%	42.000%		41.000%	39.500%	
41.000%	43.000%		41.000%	40.000%	
45.000%	47.000%		<b>40.000%</b>	<b>41.000%</b>	
32.000%	34.000%		<b>39.500%</b>	<b>42.000%</b>	
38.750%	40.000%		<b>38.750%</b>	<b>42.750%</b>	
38.000%	39.500%		38.000%	43.000%	
41.000%	42.750%		32.000%	47.000%	

Step 2 – Ignore all Tradeable Markets.

Step 3 – The Inside Market Midpoint is the mean of the Best Half of the remaining Matched Markets. If there is an odd number of Matched Markets, round up.

Best Half	
IM Bids	IM Offers
40.000%	41.000%
39.500%	42.000%
38.750%	42.750%

Inside Market Midpoint = Average (40, 41, 39.5, 42, 38.75, 42.75) =  
**40.667%, rounded to 40.625%**

- (4) For each Tradeable Market, one of the Participating Bidders whose Inside Market Bid or Inside Market Offer forms part of such Tradeable Market will make a payment to ISDA (the "**Adjustment Amount**") on the third Business Day after the Final Price Determination Date, such payment to be calculated by the Administrators as follows:

- (a) The "**Adjustment Amount**" in respect of a Tradeable Market will be an amount equal to (i) the Inside Market Quotation Amount *multiplied by* (ii) either (A) if the Open Interest is an offer to sell Deliverable Obligations, the greater of (I) zero and (II) the Inside Market Bid forming part of such Tradeable Market minus the Inside Market Midpoint or (B) if the Open Interest is a bid to purchase Deliverable Obligations, the greater of (I) zero and (II) the Inside Market Midpoint minus the Inside Market Offer forming part of such Tradeable Market. Each Participating Bidder agrees that (C) if the Open Interest is an offer to sell Deliverable Obligations, the Participating Bidder whose Inside Market Bid formed part of such Tradeable Market will pay the Adjustment Amount to ISDA and (D) if the Open Interest is a bid to purchase Deliverable Obligations, the Participating Bidder whose Inside Market Offer formed part of such Tradeable Market will pay the Adjustment Amount to ISDA. Any payments of Adjustment Amounts shall be used by ISDA to defray any costs related to the Auction. To the extent that such payments exceed the costs of the Auction, any such excess will be distributed pro rata among all the Participating Bidders. Payments of Adjustment Amounts will not be conducted or effected by, or through, any Administrator.
- (b) The steps described in (a) above are illustrated in the following example (which is not intended to reflect indicative prices for the Deliverable Obligations):

Step 1 – Consider only Tradeable Markets.

Tradeable Markets	
IM Bids	IM Offers
45.000%	34.000%
41.000%	39.500%
41.000%	40.000 %

Step 2 – Calculate the Adjustment Amount for each Tradeable Market by (a)(i) if the Open Interest is an offer to sell Deliverable Obligations, determining the greater of (A) zero and (B) the Inside Market Bid forming part of such Tradeable Market minus the Inside Market Midpoint or (ii) if the Open Interest is a bid to purchase Deliverable Obligations, determining the greater of (A) zero and (B) the Inside Market Midpoint minus the Inside Market Offer forming part of such Tradeable Market and (b) multiplying the resulting amount by the Inside Market Quotation Amount.

Example calculation of Adjustment Amount if the Open Interest is an offer to sell Deliverable Obligations:

IM Bids	IMM	Adjustment Amount (as a percentage of the Inside Market Quotation Amount)
45.000%	<b>40.625%</b>	4.375%
41.000%	<b>40.625%</b>	<b>0.375%</b>
41.000%	<b>40.625%</b>	<b>0.375%</b>

Example calculation of Adjustment Amount if the Open Interest is a bid to purchase Deliverable Obligations:

IMM	IM Offers	Adjustment Amount (as a percentage of the Inside Market Quotation Amount)
<b>40.625%</b>	34.000 %	<b>6.625 %</b>
<b>40.625%</b>	39.500%	<b>1.125%</b>
<b>40.625%</b>	40.000%	0.625%

- (5) If an Inside Market Midpoint has been determined pursuant to Section (3) above, the Administrators will match all Physical Settlement Requests with one another in order to determine the Open Interest.
- (a) If the sum of all Quotation Amounts stated in each Physical Settlement Sell Request is less than the sum of all Quotation Amounts stated in each Physical Settlement Buy Request, all Physical Settlement Sell Requests will be matched with Physical Settlement Buy Requests, subject to the Rounding Convention, and if the sum of all Quotation Amounts stated in each Physical Settlement Buy Request is less than the sum of all Quotation Amounts stated in each Physical Settlement Sell Request, all Physical Settlement Buy Requests will be matched with Physical Settlement Sell Requests, subject to the Rounding Convention (each such match, a "**Market Position Trade**"), and each such pair will form a trade at the Final Price as described in Section (7) below.
- (b) Within 30 minutes of the conclusion of the Initial Bidding Period, the Administrators will publish the following information on their respective websites:
- (i) the size and direction of the Open Interest;
  - (ii) the Inside Market Midpoint;
  - (iii) the details of any Adjustment Amounts; and

- (iv) if the Open Interest is a bid to purchase Deliverable Obligations, the Limit Offer Cap.
- (6) During the Subsequent Bidding Period, each Participating Bidder will submit Limit Order Submissions submitted to it by customers and may submit its own Limit Order Submissions. All Inside Market Bids or Inside Market Offers (as applicable) submitted during the Initial Bidding Period (regardless of whether or not they form part of a Tradeable Market) will, together with all Limit Bids or Limit Offers (as applicable), be considered "**Unmatched Limit Orders**," however any Inside Market Bid or Inside Market Offer that forms part of a Tradeable Market will be deemed to be equal to the Inside Market Midpoint for purposes of serving as an Unmatched Limit Order.
- (7) The Administrators will then match the Open Interest against the corresponding Unmatched Limit Orders.
  - (a) If the Open Interest is a bid to purchase Deliverable Obligations, it will be matched against the Unmatched Limit Orders that are Offers. If the Open Interest is an offer to sell Deliverable Obligations, it will be matched against the Unmatched Limit Orders that are Bids.
  - (b) The Open Interest will be matched against each applicable Unmatched Limit Order, beginning with the Unmatched Limit Order that is the lowest Offer or the highest Bid, as the case may be, and moving to the next remaining lowest (in the case of Offers) or next remaining highest (in the case of Bids) until:
    - (i) the full amount of the Open Interest has been matched against Unmatched Limit Orders totaling the same size as the Open Interest; or
    - (ii) all of the Unmatched Limit Orders of the relevant type have been matched to the Open Interest.

(Each Unmatched Limit Order that is matched to the Open Interest, under Section (7)(b)(i) or (ii) above, a "**Matched Limit Order**" and each Matched Limit Order/Physical Settlement Request pair, a "**Matched Limit Order Trade**"). If, in the case of Section (7)(b)(i) above, there are multiple Unmatched Limit Orders stating the same price and each could be the final Unmatched Limit Order to be matched to the Open Interest, then such final Unmatched Limit Orders will be filled Pro Rata against the remaining Open Interest, subject to the Rounding Convention.
  - (c) If the final matching of the Open Interest against the applicable Unmatched Limit Orders occurs pursuant to Section (7)(b)(i) above, the Final Price will be the price associated with the Matched Limit Order that is the highest Offer or the lowest Bid, as the case may be, provided that (A) if the Open Interest is an offer to sell Deliverable Obligations and the price associated with the lowest Matched Limit Order exceeds the Inside Market Midpoint by more than the Cap Amount, then the Final Price will be the Inside Market Midpoint plus the Cap Amount and (B) if the Open Interest is a bid to purchase Deliverable Obligations and the Inside Market Midpoint exceeds the price associated with the highest Matched Limit Order by more than the Cap Amount, then the Final Price will be the Inside Market Midpoint minus the Cap Amount. If the Open Interest is zero, the Final Price will be the Inside Market Midpoint.

- (d) If the final matching of the Open Interest against the applicable Unmatched Limit Orders occurs pursuant to Section (7)(b)(ii) above, the Final Price shall be (A) if the Open Interest is a bid to purchase Deliverable Obligations, the Limit Offer Cap or (B) if the Open Interest is an offer to sell Deliverable Obligations, zero. In such case, notwithstanding Sections (5)(a) or (7)(b) above, all Physical Settlement Requests of the same type as the Open Interest (e.g., bids to purchase or offers to sell) will be matched Pro Rata, subject to the Rounding Convention, against the Limit Orders and Physical Settlement Requests on the opposite side of the market to form Market Position Trades or Matched Limit Order Trades, as applicable.
  - (e) Each Participating Bidder whose Physical Settlement Request or Matched Limit Order, as the case may be, forms part of either a Market Position Trade or a Matched Limit Order Trade will be deemed to have entered into a bilateral agreement on terms equivalent to the Representative Auction-Settled Transaction for which (i) the Floating Rate Payer Calculation Amount is equal to the Quotation Amount in respect of the relevant Market Position Trade or Matched Limit Order Trade, as the case may be, and (ii) (A) the Seller is the Participating Bidder whose Physical Settlement Buy Request forms part of such Market Position Trade or whose Physical Settlement Buy Request, Limit Bid or Inside Market Bid, as the case may be, forms part of such Matched Limit Order Trade and (B) the Buyer is the Participating Bidder whose Physical Settlement Sell Request forms part of such Market Position Trade or whose Physical Settlement Sell Request, Limit Offer or Inside Market Offer, as the case may be, forms part of such Matched Limit Order Trade; *provided that*, (i) in the case of the Matched Limit Order Trades containing the highest Offer or the lowest Bid, as the case may be, the Quotation Amount will, if necessary, be reduced to reflect the size of the remaining Open Interest, and (ii) in the event that there are multiple Matched Limit Orders stating the highest Offer or lowest Bid, as the case may be, then such Matched Limit Orders will be filled Pro Rata against the remaining Open Interest, subject to the Rounding Convention. Participating Bidders whose Physical Settlement Request or Matched Limit Order, as the case may be, forms part of a Market Position Trade or Matched Limit Order Trade will be matched with one another alphabetically; *provided that*, prior to such alphabetical matching, the Quotation Amounts in respect of Matched Limit Orders or Physical Settlement Requests, as the case may be, submitted by the same Participating Bidder will be matched with each other, to the extent possible. Transactions entered into by and between Participating Bidders pursuant to Market Position Trades or Matched Limit Order Trades will not be conducted or effected by, or through, any Administrator.
- (8) A Delayed Auction Date or a Materiality Event Delayed Auction Date may occur under the following circumstances:
- (a) If on or after the Auction Date and before the determination of the Final Price, an event occurs or exists (i) prior to the commencement of an Initial Bidding Period or (ii) subsequent to such Initial Bidding Period but prior to the commencement of the related Subsequent Bidding Period, that is considered by any two Participating Bidders to be a Potential Materiality Event, then such Participating Bidders shall have a right to require the Administrators to call a vote of the Auction Settlement Committee to determine whether such event is a Materiality Event, which vote will take place in the case of (i) above, before the end of such Initial Bidding Period or, in the case of (ii) above, before the end of such Subsequent Bidding Period. If a majority of the Auction Settlement Committee votes that such event is a Materiality Event, then such Initial Bidding Period and, if applicable, such Subsequent Bidding Period will be deemed to have been



cancelled and the entire process contemplated by this Auction Methodology shall recommence on the next Business Day, unless prior to 10:00 a.m., New York time on such next Business Day, at a vote of the Auction Settlement Committee held by the Administrators, a majority of the Auction Settlement Committee votes that the news of the Materiality Event has not yet been sufficiently widely disseminated or another Materiality Event has occurred or exists, in which case the entire process contemplated by this Auction Methodology shall recommence on the following Business Day (i.e., two Business Days after the original vote establishing the occurrence of a Materiality Event), but in no event later than the fifth Business Day after the Auction Date (any such date on which a delayed Initial Bidding Period actually occurs following a particular Materiality Event, a "**Materiality Event Delayed Auction Date**"). The Administrators will publish the results of any vote of the Auction Settlement Committee with respect to the declaration of a Materiality Event on their respective websites.

- (b) If the process described above does not result in a Final Price for any reason, in the absence of the declaration of a Materiality Event, the relevant steps will be repeated on the Auction Date with the Initial Bidding Period and the Subsequent Bidding Period each occurring two hours or, if a third attempt is necessary, four hours, later than originally scheduled. If a Final Price cannot be determined on any such subsequent attempts on the Auction Date itself, in the absence of the declaration of a Materiality Event, up to three attempts will be made on the same schedule on the Business Day following the Auction Date (such date, a "**Delayed Auction Date**").
  - (c) In the case where a Materiality Event has been declared, if the process described above does not result in a Final Price on the related Materiality Event Delayed Auction Date for any reason, in the absence of the declaration of another Materiality Event, the relevant steps will be repeated on such Materiality Event Delayed Auction Date with the Initial Bidding Period and the Subsequent Bidding Period each occurring two hours or, if a third attempt is necessary, four hours, later than originally scheduled on such Materiality Event Delayed Auction Date. If a Final Price cannot be determined on any such subsequent attempts on such Materiality Event Delayed Auction Date itself, in the absence of the declaration of another Materiality Event, up to three attempts will be made on the same schedule on the Business Day following such Materiality Event Delayed Auction Date.
  - (d) If, after the earlier of (i) the additional attempts described in Section 8(b) and (c) above, and (ii) the fifth Business Day following the Auction Date, a Final Price has not been determined, an "**Auction Cancellation Event**" will be deemed to have occurred (the date of such an event, an "**Auction Cancellation Date**"). The Administrators will announce the occurrence of an Auction Cancellation Event on their respective websites.
- (9) Within one hour of the conclusion of the Subsequent Bidding Period, the Administrators will publish the following information on their respective websites:
- (a) the Final Price;
  - (b) the names of the Participating Bidders who submitted Bids, Offers and Physical Settlement Requests, together with the details of all such bids and offers submitted by each (e.g., Participating Bidders and Quotation Amounts);
  - (c) the details and size of all Market Position Trades or Matched Limit Order Trades.

- (10) The following rules will apply to Physical Settlement Requests and Limit Orders submitted by any Participating Bidder:
- (a) Any Inside Market Bid, Inside Market Offer or Limit Order may not be amended either by the Participating Bidder or the Administrators after the conclusion of the Initial Bidding Period or Subsequent Bidding Period, as applicable, even if such submission is a mistake, and all Participating Bidders will be required to comply with the terms of any Matched Limit Order Trade of which such Inside Market Bid, Inside Market Offer or Limit Order forms a part.
  - (b) If a Participating Bidder submits a Physical Settlement Request that is in the same direction as, but less than or equal to, such Participating Bidder's Market Position, such Physical Settlement Request may not be amended by either the Participating Bidder or the Administrators after the conclusion of the Initial Bidding Period, even if such submission is a mistake, and all Participating Bidders will be required to comply with the terms of any Market Position Trade or Matched Limit Order Trade of which such Physical Settlement Request forms a part.
  - (c) If a Participating Bidder becomes aware that the Physical Settlement Request it has submitted is in the opposite direction from, or is greater than, such Participating Bidder's Market Position, such Participating Bidder will immediately notify the Administrators and will submit its corrected Physical Settlement Request.
  - (d) If the Administrators receive such corrected Physical Settlement Request at least thirty minutes prior to the beginning of the Subsequent Bidding Period (the "**Correction Deadline**"), the Administrators will determine the Open Interest based on the corrected submission at least fifteen minutes prior to the beginning of the Subsequent Bidding Period. If the Administrators do not become aware of such corrected Physical Settlement Request until after the Correction Deadline, the Administrators will not re-calculate the Open Interest or the Final Price, and all Covered Transactions will settle according to the Final Price published by the Administrators.
  - (e) Each Auction Party agrees that no Participating Bidder will be liable to any party for any form of damages, whether direct, indirect, special or consequential, arising as a result of the publication of a Final Price (or any other result of the procedures contemplated by this Auction Methodology), and agrees to waive any claim that may arise against any Participating Bidder, in each case except in the case of fraud or willful misconduct on the part of such Participating Bidder.
  - (f) Each Auction Party that is not a Participating Bidder agrees that neither Administrator will be liable to any party for any form of damages, whether direct, indirect, special or consequential, arising in connection with the performance of its duties under the auction procedures contemplated by this Auction Methodology, and agrees to waive any claim that may arise against either Administrator in connection with the performance of the relevant Administrator's duties under these auction procedures, except in the case of fraud or willful misconduct on the part of such Administrator.
  - (g) All Bids and Offers, as well as the Final Price, will be expressed as a percentage of the outstanding principal balance (rather than the face amount) of Deliverable Obligations.

- (11) Each Adhering Party agrees that the Cash Settlement Date or the Cash Settlement Date in respect of the Tembec Portion, as applicable, is October 15, 2008 (the "**Cash Settlement Date**").
- (12) Each Participating Bidder and each customer that submits a Customer Physical Settlement Request or Limit Order through a Participating Bidder agrees that any Customer Physical Settlement Request and any Limit Order submitted by such customer will, to the extent such Customer Physical Settlement Request or Limit Order is matched in order to form a Market Position Trade or Matched Limit Order Trade, be treated by such customer and Participating Bidder as if such customer and Participating Bidder had entered into a bilateral agreement on terms equivalent to the Representative Auction-Settled Transaction for which (i) the Floating Rate Payer Calculation Amount is equal to the Quotation Amount in respect of the relevant Market Position Trade or Matched Limit Order Trade, as the case may be, and (ii) (A) the customer will be the Seller if the relevant Market Position Trade includes such customer's Physical Settlement Buy Request or if the relevant Matched Limit Order Trade includes such customer's Physical Settlement Buy Request or Limit Bid and (B) the customer will be the Buyer if the relevant Market Position Trade includes such customer's Physical Settlement Sell Request or if the relevant Matched Limit Order Trade includes such customer's Physical Settlement Sell Request or Limit Offer; provided that, in the case of the Matched Limit Order Trades containing the highest Offer or the lowest Bid, as the case may be, the Quotation Amount will, if necessary, be reduced to reflect the size of the remaining Open Interest. Transactions entered into by and between customers and Participating Bidders in respect of Market Position Trades or Matched Limit Order Trades will not be conducted or effected by, or through, any Administrator.
- (13) References in this Exhibit 3 to the following terms have the meaning indicated below:
- "**Adjustment Amount**" has the meaning set forth in Section (4)(a) of this Exhibit 3.
- "**Administrators**" means both Markit Group Limited and Creditex Securities Corp., acting together.
- "**Auction Cancellation Date**" has the meaning set forth in Section (8)(d) of this Exhibit 3.
- "**Auction Cancellation Event**" has the meaning set forth in Section (8)(d) of this Exhibit 3.
- "**Auction Date**" means October 2, 2008.
- "**Auction-Linked Cash Settled Transaction**" means, in respect of a Participating Bidder or a customer, any Transaction (other than a Covered Transaction) all or any portion of which is linked to Tembec to which such Participating Bidder or customer, as the case may be, or its affiliate is a party and which will be cash-settled (by bilateral agreement between the parties thereto) at the Final Price determined pursuant to this Auction Methodology.
- "**Auction Party**" means any Participating Bidder, party to a Covered Transaction, party to an Auction-Linked Cash Settled Transaction or party on behalf of which a Customer Physical Settlement Request or Limit Order is submitted by a Participating Bidder.
- "**Auction Settlement Committee**" means the entities that are Participating Bidders.
- "**Best Half**" means the group of Matched Markets determined pursuant to Section (3)(b) of this Exhibit 3.

**"Bid"** means an Inside Market Bid or a Limit Bid.

**"Bidding Agreement Letter"** means a letter agreement, substantially in the form of Exhibit 4 to this Protocol, executed and delivered to the Administrators and ISDA no later than 5:00 p.m. New York time on the Cut-off Date.

**"Cap Amount"** means 1% of par.

**"CDS Dealer"** means any entity (or any of its affiliates) appearing on the list of CDS Dealers published by ISDA on its Website(s) at [www.isda.org](http://www.isda.org) (or any successor website thereto) and updated by ISDA from time to time.

**"Common Event Determination Date"** means September 8, 2008.

**"Correction Deadline"** has the meaning set forth in Section (10)(d) of this Exhibit 3.

**"Crossing Market"** means any Matched Market for which the Inside Market Bid is higher than the Inside Market Offer.

**"Customer Physical Settlement Request"** means a Physical Settlement Buy Request or a Physical Settlement Sell Request submitted by a Participating Bidder on behalf of a customer and received by the Administrators during the Initial Bidding Period.

**"Cut-off Date"** means September 26, 2008.

**"Dealer Physical Settlement Request"** means a Physical Settlement Buy Request or a Physical Settlement Sell Request submitted by a Participating Bidder for its own account and received by the Administrators during the Initial Bidding Period.

**"Dealer-Specific Market Position"** means, with respect to a customer and a Participating Bidder, such customer's Market Position with respect to such customer's Covered Transactions and Auction-Linked Cash Settled Transactions only with such Participating Bidder (or its affiliates), calculated by such customer in good faith.

**"Delayed Auction Date"** has the meaning set forth in Section (8)(b) of this Exhibit 3.

**"Deliverable Obligation"** means the following obligation:

	<b>Initial Amount</b>	<b>Date</b>	<b>Maturity</b>	<b>Initial Spread</b>
Term Loan	\$300 mm	February 29, 2008	February 28, 2012	LIBOR + 700 bps/ Base Rate + 600 bps

**"Final Price"** means the price determined to be the Final Price pursuant to Section (7)(c) or (d) of this Exhibit 3.

**"Final Price Determination Date"** means the day the Final Price is determined.

**"Initial Bidding Period"** means any time between 9:45 a.m. and 10:00 a.m. New York time on the Auction Date or, if the process described in Sections (2) and (3)(a) and (3)(b) must be repeated pursuant to Section (8), the fifteen minute period occurring just before noon or 2:00 p.m. New York time, as the case may be, on the Auction Date, or on a subsequent Business Day as required under Section (8) of this Exhibit 3 (or at such other time as the Administrators determine is necessary to implement the procedures described in this Exhibit 3), until the earlier of the Final Price Determination Date or the occurrence of an Auction Cancellation Event.

**"Inside Market Bid"** means a firm commitment by a Participating Bidder, submitted as part of a Valid Inside Market Submission, to enter as Seller (i.e., the party that has an obligation to accept delivery of Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Inside Market Quotation Amount and at the Reference Price stated in the Valid Inside Market Submission.

**"Inside Market Midpoint"** means the price determined to be the Inside Market Midpoint pursuant to Section (3) of this Exhibit 3.

**"Inside Market Offer"** means a firm commitment by a Participating Bidder, submitted as part of a Valid Inside Market Submission, to enter as Buyer (i.e., the party that would deliver Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Inside Market Quotation Amount and at the Reference Price stated in the Valid Inside Market Submission.

**"Inside Market Quotation Amount"** means the greater of USD\$2,000,000 and the smallest minimum denomination or transfer amount applicable to any Deliverable Obligation.

**"Limit Bid"** means a firm commitment by a Participating Bidder, submitted as part of a Limit Order Submission, to enter as Seller (i.e., the party that has an obligation to accept delivery of Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount stated in such Limit Order Submission and at the Reference Price stated in such Limit Order Submission.

**"Limit Offer"** means a firm commitment by a Participating Bidder, submitted as part of a Limit Order Submission, to enter as Buyer (i.e., the party that would deliver Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount stated in such Limit Order Submission and at the Reference Price stated in such Limit Order Submission; provided, however, that if the Open Interest is a bid to purchase Deliverable Obligations, no Limit Offer shall be submitted by any Participating Bidder naming a Reference Price greater than the Limit Offer Cap, and any such Limit Offer shall be void for the purposes of this Auction.

**"Limit Offer Cap"** means the greater of (i) 100% and (ii) the highest Inside Market Offer forming part of a Valid Inside Market Submission with respect to which the Inside Market Bid is part of a Non-Tradeable Market.

**"Limit Order Submission"** means a submission from a Participating Bidder received by the Administrators during the Subsequent Bidding Period of a Limit Bid and/or a Limit Offer expressed as a percentage (in increments of one eighth of one percent (e.g., 35.375%)) and for which a Quotation Amount is stated.

**"Market Position"** means, in respect of a customer or a Participating Bidder, the aggregate amount of Deliverable Obligations the relevant Participating Bidder or customer, as applicable, would have to buy or sell in order to obtain an identical risk profile with respect to both (a) all Covered Transactions to which it or any of its affiliates is a party and for which every other party thereto is an Adhering Party and (b) all Auction-Linked Cash Settled Transactions, after settlement under the Protocol compared to its risk profile before settlement under the Protocol, such risk profile to be determined without regard to whether the original transactions were documented as cash settled or physically settled transactions.

**"Market Position Trade"** has the meaning set forth in Section (5)(a) of this Exhibit 3.

**"Matched Limit Order"** has the meaning set forth in Section (7)(b) of this Exhibit 3.

**"Matched Limit Order Trade"** has the meaning set forth in Section (7)(b) of this Exhibit 3.

**"Matched Market"** has the meaning set forth in Section (3)(a) of this Exhibit 3.

**"Materiality Event"** means a Potential Materiality Event that has been determined to be a Materiality Event pursuant to Section (8)(a) of this Exhibit 3.

**"Materiality Event Delayed Auction Date"** has the meaning set forth in Section (8)(a) of this Exhibit 3.

**"Non-Tradeable Market"** means any Matched Market that is not a Tradeable Market.

**"Notice of Physical Settlement Date"** means the later to occur of (i) the thirtieth calendar day after the Common Event Determination Date (as adjusted in accordance with the Following Business Day Convention (as defined in the Credit Definitions)) and (ii) the second Business Day after the Final Price Determination Date.

**"Offer"** means any Limit Offer or any Inside Market Offer.

**"Open Interest"** means the difference between (i) the sum of all Quotation Amounts stated in each Physical Settlement Buy Request and (ii) the sum of all Quotation Amounts stated in each Physical Settlement Sell Request.

**"Participating Bidder"** means any institution that submits a valid Bidding Agreement Letter no later than 5:00 p.m. New York time on the Cut-off Date.

**"Physical Settlement Buy Request"** means a firm commitment by a Participating Bidder (either for its own account or on behalf of a customer), received by the Administrators during the Initial Bidding Period, to enter, as Seller (i.e., the party that has an obligation to accept delivery of Deliverable Obligations), into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount stated in the Submission.

**"Physical Settlement Request"** means a Physical Settlement Buy Request or a Physical Settlement Sell Request submitted by a Participating Bidder and received by the Administrators during the Initial Bidding Period.

**"Physical Settlement Sell Request"** means a firm commitment by a Participating Bidder (either for its own account or on behalf of a customer), received by the Administrators during the Initial Bidding Period, to enter, as Buyer (i.e., the party that would deliver Deliverable Obligations), into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount stated in the Submission.

**"Potential Materiality Event"** means an event or news the occurrence of which has or could have a significant effect on the price of the Representative Auction-Settled Transaction.

**"Pro Rata"** means that Participating Bidders' orders are matched proportionally with respect to the Quotation Amount of each such order and the total amount of orders that can be matched in the relevant part of the auction.

**"Quotation Amount"** means the US\$ amount stated as the notional amount with respect to a particular Limit Bid, Limit Offer, Inside Market Bid, Inside Market Offer or Physical Settlement Request in a Participating Bidder's Submission, which amount in each case will be an integral multiple of US\$1,000,000.

**"Representative Auction-Settled Transaction"** means a Credit Derivative Transaction incorporating the definitions and provisions contained in the Credit Definitions, for which:

- (a) the Reference Entity is Tembec;
- (b) the Settlement Method is Physical Settlement;
- (c) the Settlement Currency is USD;
- (d) the Event Determination Date is the Common Event Determination Date;
- (e) a Credit Event Notice and Notice of Publicly Available Information are deemed to have been effectively delivered on a timely basis;
- (f) all Fixed Amounts are deemed to have been paid when due;
- (g) the Deliverable Obligations specified are those defined as Deliverable Obligations in this Protocol;
- (h) the Reference Price is the Final Price determined pursuant to this Exhibit 3;
- (i) the Calculation Agent is (i) if both parties to the Representative Auction-Settled Transaction are Participating Bidders, the Seller under such Representative Auction-Settled Transaction and (ii) if only one party to the Representative Auction-Settled Transaction is a Participating Bidder, such Participating Bidder; and
- (j) the following amendments are made to the Credit Definitions for purposes of the Representative Auction-Settled Transaction:
  - (i) Section 3.4 of the Credit Definitions is deleted and the following is inserted in its place:

**"Notice of Physical Settlement"** means a notice from Buyer to Seller (which may be by telephone and which shall be subject to the requirements regarding

notices set forth in Section 1.10) that (i) irrevocably confirms that Buyer will settle the Credit Derivative Transaction and require performance in accordance with the Physical Settlement Method and (ii) contains a detailed description of the Deliverable Obligations that Buyer will, subject to Section 9.2(c)(ii), Deliver to Seller, including the outstanding principal balance or Due and Payable Amount of each such Deliverable Obligation to be Delivered and the information described in the form of Notice of Physical Settlement attached as Exhibit 5. Buyer may notify Seller (in the manner given as aforesaid) that Buyer is changing one or more Deliverable Obligations to be Delivered (to the extent such Deliverable Obligation has not previously been Delivered) or the detailed description thereof, but each such notice must be effective at or prior to 11:00 a.m. New York time on the Physical Settlement Date (determined without reference to any such change). Notwithstanding the foregoing, Buyer may correct any errors or inconsistencies in the detailed description of the Deliverable Obligations by notice to Seller (given as aforesaid) prior to the relevant Delivery Date.

If Buyer fails to deliver an effective Notice of Physical Settlement on or before the Notice of Physical Settlement Date, Buyer will have no right thereafter to deliver a Notice of Physical Settlement. If Buyer has not delivered an effective Notice of Physical Settlement, Seller will have the right, from and including the Notice of Physical Settlement Date to and including the fifteenth calendar day after the Notice of Physical Settlement Date, to deliver a notice to Buyer, which notice shall contain a detailed description of the Deliverable Obligations that Buyer will be required to Deliver to Seller, including the outstanding principal balance and/or Due and Payable Amount (the "Principal Balance") of each such Deliverable Obligation (the aggregate of such Principal Balances (or the equivalent Currency Amount) shall be equal to or less than the Floating Rate Payer Calculation Amount).

If Buyer delivers an effective Notice of Physical Settlement on or before the Notice of Physical Settlement Date but such Notice of Physical Settlement specifies Deliverable Obligations with a Principal Balance (or the equivalent Currency Amount) less than the Floating Rate Payer Calculation Amount, Seller will have the right, from but excluding the Notice of Physical Settlement Date to and including the fifteenth calendar day after the Notice of Physical Settlement Date, to deliver a notice to Buyer, which notice shall contain a detailed description of the additional Deliverable Obligations that Buyer will be required to Deliver to Seller, including the Principal Balance of each such Deliverable Obligation; provided that the aggregate specified Principal Balance (or the equivalent Currency Amount) shall be equal to or less than the amount by which the Floating Rate Payer Calculation Amount exceeds the aggregate Principal Balance (or the equivalent Currency Amount) of Deliverable Obligations specified in the Notice of Physical Settlement delivered by Buyer.

Any notice delivered by Seller pursuant to this Section 3.4 will include the information described in the form of Notice of Physical Settlement attached as Exhibit 5. Delivery of any such notice shall be deemed to be effective delivery of a Notice of Physical Settlement or an effective amendment to any Notice of Physical Settlement delivered by Buyer, as applicable. Buyer may not change any such notice, other than to correct errors or inconsistencies. If Seller delivers



any such notice on the Notice of Physical Settlement Date, and Buyer delivers an effective Notice of Physical Settlement on the same day, then Buyer's Notice of Physical Settlement will prevail over Seller's notice.

If the fifteenth calendar day after the Notice of Physical Settlement Date is not a Business Day, the last day on which Seller may deliver a notice described in this Section 3.4 shall be adjusted in accordance with the Following Business Day Convention.

If Buyer fails to deliver an effective Notice of Physical Settlement on or prior to the Notice of Physical Settlement Date, and Seller fails to deliver the relevant notice to Buyer by or on the fifteenth calendar day after the Notice of Physical Settlement Date (subject to adjustment in accordance with the Following Business Day Convention), then such fifteenth calendar day will be the Termination Date."

- (ii) Section 7.1 is replaced with the following:

"If "Cash Settlement" is deemed to apply pursuant to Section 9.3, 9.4, 9.5 or 9.6, (a) if the Cash Settlement Amount is a positive number, Seller shall, subject to Section 3.1, pay the Cash Settlement Amount to Buyer on the Cash Settlement Date; and (b) if the Cash Settlement Amount is a negative number, Buyer shall, subject to Section 3.1, pay the absolute value of the Cash Settlement Amount to Seller on the Cash Settlement Date."

- (iii) Section 8.1 of the Credit Definitions is amended by replacing the words "Physical Settlement Amount" in the second paragraph thereof with the words "Floating Rate Payer Calculation Amount."

- (iv) Section 9.1(b) of the Credit Definitions is amended by deleting the word "and" from the end of Section 9.1(b)(iv), replacing the period at the end of Section 9.1(b)(v) with a semicolon and adding the following to the end of Section 9.1(b):

"(vi) each party has determined to enter into such Credit Derivative Transaction notwithstanding any information described in Section 9.1(b)(iv) above of which the other party may have possession, and notwithstanding that the other party may be contractually prohibited from disclosing or offering to disclose such information to it by virtue of any credit agreement or other agreement with a Reference Entity, any Affiliate of a Reference Entity, any Underlying Obligor or any other person or entity having obligations relating to a Reference Entity or any Underlying Obligor or otherwise; and

(vii) neither party shall have any liability to the other party (or its officers, directors, agents, partners, members, controlling entities or employees) and each party waives and releases any claims that it might have against the other party (or its officers, directors, agents, partners, members, controlling entities or employees) whether under applicable securities laws or otherwise, with respect to the nondisclosure of any information described in Section 9.1(b)(iv) above in connection with such Credit Derivative Transaction; provided, however, that such information does not and shall not affect the truth or accuracy of any

representation made by such party herein or in the Confirmation for such Credit Derivative Transaction."

- (v) Section 9.8(a) of the Credit Definitions is replaced with the following:

"(a) "Cash Settlement Amount" is deemed to be, for each Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation, the aggregate of (A) the outstanding principal balance, Due and Payable Amount or Currency Amount, as applicable, of each Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation multiplied by (B) the Reference Price minus the Final Price with respect to such Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation."
- (vi) Section 9.8(c) of the Credit Definitions is amended by deleting the words "and 'Reference Price' is deemed to be one hundred per cent".
- (vii) Section 9.9 of the Credit Definitions is amended by deleting the second sentence of the penultimate paragraph and replacing it with the following:

"On the third Business Day following such notice, Buyer will be deemed to have Delivered an outstanding principal balance of the Deliverable Obligations specified in the Notice of Physical Settlement for which a Buy-in Price was determined and Buyer will pay to Seller an amount equal to (A) the outstanding principal balance of the Deliverable Obligations specified in the Notice of Physical Settlement, multiplied by (B) the excess, if any, of (I) the Buy-in Price over (II) the Final Price, plus (C) any reasonable brokerage costs incurred by Seller in connection with any purchases by it of the Relevant Bonds as part of the buy-in."
- (viii) Section 9.10(a) of the Credit Definitions is amended by adding the following at the beginning of the section: "This section 9.10(a) will not be applicable if Seller delivers a notice that is deemed to effect delivery of a Notice of Physical Settlement instead of Buyer delivering a Notice of Physical Settlement."
- (ix) Section 9.10(b) of the Credit Definitions is amended by deleting the following from the thirteenth line thereof: "at a price (expressed as a percentage) less than the Reference Price".

**"Rounding Convention"** means that, if a Participating Bidder's order is matched in an amount that is not an integral multiple of US\$100,000, then the amount to be so matched will be rounded down to the nearest US\$100,000. The difference between the total amounts of all orders having been filled Pro Rata and the total of all rounded down amounts will be allocated US\$100,000 at a time to Participating Bidders in order, beginning with the Participating Bidder with the order stating the largest Quotation Amount at the same price. In the event that there are Participating Bidders with identical orders of such type, US\$100,000 amounts will be allocated first to the Participating Bidder whose orders were received first by the Administrators.

**"Submission"** means, with respect to a Participating Bidder, any Valid Inside Market Submission or Limit Order Submission of such Participating Bidder or Physical Settlement Request submitted by such Participating Bidder to the Administrators.

**"Subsequent Bidding Period"** means any time during the fifteen minutes preceding the turn of the hour that is greater than two hours but less than three hours after the announcement by the Administrators of the Open Interest calculated in connection with the immediately preceding Initial Bidding Period. (For example, if such announcement is made at 10:30 a.m. New York time, the Subsequent Bidding Period would be anytime between 12:45 p.m. and 1:00 p.m. New York time on the same day.)

**"Touching Market"** means any Matched Market for which the Inside Market Bid and Inside Market Offer are equal.

**"Tradeable Market"** means any Matched Market that is a Crossing Market or a Touching Market.

**"Unmatched Limit Order"** has the meaning set forth in Section (6) of this Exhibit 3.

**"Valid Inside Market Submission"** means a submission from a Participating Bidder received by the Administrators during the Initial Bidding Period of both an Inside Market Bid and an Inside Market Offer, each expressed as a percentage (in increments of one eighth of one percent (e.g., 35.375%)) which do not differ from one another by more than 2.00% of par, and for which the Inside Market Bid is not greater than or equal to the Inside Market Offer.

**Form of Bidding Agreement Letter**

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**[Letterhead of Participating Bidder]**

**[Date]**

**Markit Group Limited**  
**Send to: cdx@markit.com**

**Creditex, Inc.**  
**Send to: CEF@creditex.com**

**International Swaps and Derivatives Association, Inc.**  
**Send to: TembecProtocol@isda.org**

Dear Sirs,

We write to inform you that we wish to be a "Participating Bidder," as defined in the Auction Methodology included as part of the 2008 Tembec CDS Protocol published by the International Swaps and Derivatives Association, Inc. on September 17, 2008 (the "**Protocol**"), in respect of Tembec. Capitalized terms used in this letter but not defined herein have the meanings specified in the Protocol.

We hereby notify you that it is our intention that, pursuant to the Protocol at the time of submission, any Dealer Physical Settlement Request we submit will, to the best of our knowledge and belief, be in the same direction as and will not exceed our Market Position.

By signing and returning this Bidding Agreement Letter to you, we represent that:

- (a) from time to time we regularly trade in one or more obligations of the types of obligations listed under the definition of "Deliverable Obligation" in Exhibit 3 to the Protocol in the secondary market or we regularly trade credit default swaps with Tembec as the Reference Entity;
- (b) we are, or our affiliate is, a CDS Dealer, as defined in the Protocol;
- (c) none of our affiliates has previously submitted a Bidding Agreement Letter to you; and
- (d) we are not, as of the date of this letter, subject to any requirement that would make it impossible or illegal for us to deliver or accept delivery of any of the Deliverable Obligations.

In addition, we agree that neither Administrator shall be liable to us for any indirect, special or consequential damages resulting from our participation in the auction described in the Auction Methodology (the "**Auction**") (including any Adjustment Amounts involving our Bid or Offer), and that each Administrator's maximum cumulative liability for direct and any other damages arising out of our participation in the Auction (including any Adjustment Amounts), other than damages resulting from

gross negligence, wilful misconduct or breach of representations made to the Participating Bidders in Creditex, Inc.'s letter to the Participating Bidders dated September 22, 2008 on the part of such Administrator, is limited to US\$10,000 in the aggregate.

We agree to abide by the terms of the Auction Methodology set out in Exhibit 3 to the Protocol, including, for the avoidance of doubt, Section 10 of such Exhibit 3.

Our contact details for purposes of this Bidding Agreement Letter are:

Name:  
Address:  
Telephone:  
Fax:  
E-mail:

We consent to the publication of the conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[PARTICIPATING BIDDER]<sup>3</sup>

By:

Name:
Title:
Signature:

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<sup>3</sup> Specify legal name of Participating Bidder.

### Form of Notice of Physical Settlement

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Attention: [client contact]  
 By Fax: [facsimile]  
 By Phone: [telephone]

[CLIENT]

Dear Sirs

#### NOTICE OF PHYSICAL SETTLEMENT

Credit Derivative Transaction Details:<sup>4</sup> Transaction formed pursuant to Exhibit 3 of the 2008 TEMBEC CDS PROTOCOL (the **Protocol**) entered into between [SELLER], as Seller (i.e., the party identified by the Auction Administrators as having an obligation to accept Delivery of Deliverable Obligations), and [BUYER] as Buyer (i.e., the party identified by the Auction Administrators as having the obligation to Deliver Deliverable Obligations), and for which the **Floating Rate Payer Calculation Amount** is USD [●]<sup>5</sup>.

Reference is made to the Credit Derivative Transaction described above (the **Transaction**).

(1) Pursuant to Section 12 of Exhibit 3 to the Protocol, the Event Determination Date for this Transaction is the Common Event Determination Date and a Credit Event Notice and Notice of Publicly Available Information are deemed to have been effectively delivered on a timely basis.

(2) Any capitalized term not otherwise defined in this letter will have the meaning, if any, assigned to such term in the Protocol or, if no meaning is specified therein, in the 2003 ISDA Credit Derivatives Definitions.

(3) We hereby confirm that we will settle the Transaction and require performance by you in accordance with the Physical Settlement Method. Subject to the terms of the Transaction, we will deliver to you on or before the Physical Settlement Date as the following Deliverable Obligations against payment of the Floating Rate Payer Calculation Amount multiplied by the Final Price of [●]<sup>6</sup>:

- **Outstanding Principal Balance:** [●]

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<sup>4</sup> These Transactions Details will need to be adjusted appropriately where this form is used in respect of a transaction between a customer and a Participating Bidder.

<sup>5</sup> The Quotation Amount of the Transaction identified by Auction Administrators.

<sup>6</sup> Adjustment of this provision will be required where Buyer is delivering Deliverable Obligations with a Principal Balance equal to less than the relevant Floating Rate Payer Calculation.

- **Primary Obligor:** Tembec Industries, Inc.
- **Maturity:** February 28, 2012
- **Type:** Term Loan dated February 29, 2008

(4) This letter shall be governed by and interpreted in accordance with the laws of the State of New York.

Very truly yours,

[     ]

By: \_\_\_\_\_

Name:

Title:

## SCHEDULE 1

### (1) Amendments affecting all Covered Transactions

With effect from the later of (a) the Common Event Determination Date and (b) the Trade Date in respect of the relevant Covered Transaction, the Documentation relating to each Covered Transaction shall be modified as follows. To the extent any provision of the Credit Definitions is inconsistent with the terms of this Schedule 1, the terms of this Schedule 1 shall govern.

- (a) *Effect of Actual Notices.* Except with respect to any First to Default Transaction or Nth to Default Transaction for which any two or more of (i) Tembec, (ii) Federal National Mortgage Association, and (iii) Federal Home Loan Mortgage Corporation are Reference Entities (each such Transaction, an "**Affected Transaction**"), any Credit Event Notice, Notice of Publicly Available Information or Notice of Physical Settlement delivered with respect to Tembec or the Tembec Portion shall be deemed revoked, and neither party shall have any obligations with respect to any such notice.
- (b) *No Additional Notice Deliveries.* Except for the deemed notices provided in clause (c) below and notices with respect to any Affected Transaction, each party agrees not to deliver any Credit Event Notice, Notice of Publicly Available Information or Notice of Physical Settlement with respect to Tembec or the Tembec Portion, and any such notice delivered shall be void and have no effect.
- (c) *Satisfaction of Conditions to Settlement.*
  - (i) A Notifying Party shall be deemed to have delivered a Credit Event Notice with respect to Tembec or the Tembec Portion and a Notice of Publicly Available Information, which notice in each case is effective as of the Common Event Determination Date and satisfies the requirements of the documentation governing the relevant Covered Transaction.
  - (ii) The Conditions to Settlement in each Covered Transaction are amended by eliminating any requirement that Buyer deliver a Notice of Physical Settlement with respect to Tembec. Accordingly, the Conditions to Settlement with respect to Tembec or the Tembec Portion are deemed satisfied on the later of (A) the Common Event Determination Date and (B) the Trade Date.
- (d) *Settlement Terms.* The Covered Transaction, or the portion thereof to which Tembec relates, as applicable, shall settle as if the Settlement Method specified in the Documentation were Cash Settlement, subject to the following:
  - (i) The Final Price will be determined as described in the Auction Methodology, with the Final Price Determination Date as the Single Valuation Date. Notwithstanding Section 7.4 of the Credit Definitions, the Calculation Agent will not be obligated to provide any notice with respect to Quotations or the calculation of such Final Price.
  - (ii) The Cash Settlement Amount will be determined as provided in Section 7.3 of the Credit Definitions as modified by the amendment in the applicable section below.
  - (iii) In respect of each Covered Transaction that is not a Covered Portfolio Swap, (A) the Cash Settlement Date under the Covered Transaction or the Cash Settlement Date in respect of the Tembec Portion, as applicable, shall be the Cash Settlement Date specified



in the Auction Methodology, and (B) in respect of each Covered Portfolio Swaption, the Cash Settlement Date shall be as set out under clause (f) "Portfolio Swaptions" below.

- (e) If an Auction Cancellation Event occurs, subsections (b), (c)(ii) and (d) above shall be rescinded and have no further effect. For the avoidance of doubt, if an Auction Cancellation Event occurs, a party may deliver a Notice of Physical Settlement or any other relevant notice with respect to any Covered Transaction in accordance with the relevant documentation and settle any Covered Transaction in accordance with the relevant documentation; provided that the reference to the "Event Determination Date" in Section 3.4 of the Credit Definitions shall be deemed to refer to the relevant Auction Cancellation Date.

**(2) Amendments affecting particular Covered Transactions**

Provided that an Auction Cancellation Event does not occur, with effect from the Final Price Determination Date, the Documentation relating to each Covered Transaction specified below shall be modified additionally, as follows:

- (a) ***Single name CDS transactions.*** The Documentation relating to each Single Name CDS Transaction is amended as follows:
  - (i) ***Accruals.*** Notwithstanding anything to the contrary in the Documentation, the Fixed Rate shall accrue as if no Event Determination Date had occurred to but excluding September 22, 2008 for purposes of the payment due on that date. However, a rebate of the Fixed Rate accrual for the period from and including September 9, 2008, to but excluding September 22, 2008 (or, in the case of a Transaction for which the Scheduled Termination Date is September 20, 2008, to and including September 20, 2008), will be added to the Cash Settlement Amount to be paid by Seller to Buyer on the Cash Settlement Date.
- (b) ***Untranchcd transactions.*** The Documentation relating to each Bespoke Untranchcd Portfolio Transaction, Covered CDX Untranchcd Transaction, First to Default Transaction, Single Name CDS Transaction and Single Name Constant Maturity Swap Transaction is amended as follows:
  - (i) ***Accruals.*** Notwithstanding anything to the contrary in the Documentation, the Fixed Rate on Tembec or the Tembec Portion, as applicable, shall accrue as if no Event Determination Date had occurred to but excluding September 22, 2008 for purposes of the payment due on that date. However a rebate of the Fixed Rate accrual on Tembec, or the Tembec Portion, as applicable, for the period from and including September 9, 2008, to but excluding September 22, 2008 (or, in the case of a Transaction for which the Scheduled Termination Date is September 20, 2008, to and including September 20, 2008), will be added to the Cash Settlement Amount to be paid by Seller to Buyer on the Cash Settlement Date.
- (c) ***Tranchcd transactions based on CDX documentation.*** The Documentation relating to tranchcd transactions based on CDX documentation, including Bespoke Tranchcd Portfolio Transactions, Covered CDX Tranchcd Transactions, Interest Only Transactions, Portfolio Constant Maturity Swap Transactions and Principal Only Transactions, is amended as follows:
  - (i) ***Accruals.*** Notwithstanding anything to the contrary in the Documentation, the Fixed Rate shall accrue as if no Event Determination Date had occurred with respect to Tembec to but excluding September 22, 2008 for purposes of the payment due on that date. However, a rebate of the Fixed Rate accrual on the Tembec Portion equal to the reduction in the Outstanding Swap Notional Amount for the Incurred Loss Amount, if any, and Incurred Recovery Amount, if any, relating to the Tembec Portion for the period from

and including September 9, 2008, to but excluding September 22, 2008 (or, in the case of a Transaction for which the Scheduled Termination Date is September 20, 2008, to and including September 20, 2008), will be added to the Cash Settlement Amount to be paid by Seller to Buyer on the Cash Settlement Date. Notwithstanding anything to the contrary in the Documentation, the Cash Settlement Amount (if any) in respect of the Tembec portion shall be payable on the Cash Settlement Date determined pursuant to this protocol.

- (ii) *Settlement Terms.* Unless an Auction Cancellation Event occurs, the Tembec Portion shall settle in accordance with the Documentation, subject to the following:
  - (A) To the extent applicable in the Documentation, Buyer will be deemed to have Delivered the Selected Obligation with an outstanding principal balance having a Currency Amount equal to the Reference Entity Notional Amount on the Auction Date.
  - (B) To the extent applicable in the Documentation, Seller will not be obligated to pay the related Market Value Amount or Estimated Amount (or any similarly defined amount), as applicable, and neither party will have any obligation to pay any Adjustment Amount (or any similarly defined amount) in connection with such deemed Delivery.
- (iii) *Cash-settled only tranching transactions based on CDX documentation.* If the Documentation relating to any tranching transaction based on CDX documentation specifies Cash Settlement, as modified by the parties, as the sole Settlement Method, the terms of this Schedule 1 shall be construed in respect of such transaction (and, with respect to Covered CDX Tranching Transactions, after taking into account any differences between the relevant Index Documentation and the form documentation published by CDS IndexCo LLC in July 2004, March 2005, June 2005, March 2006 or March 2007) to effectuate the parties' intent that, other than in the case of an Auction Cancellation Event, the Final Price, determined as described in the Auction Methodology set forth in Exhibit 3 to this Protocol, be used to determine the amounts, if any, payable by and/or other rights and obligations of the parties with respect to the settlement of the Tembec Portion.
- (d) *Tranching transactions not based on CDX documentation.* The Documentation relating to tranching transactions not based on CDX documentation is amended as necessary in order that the the Fixed Rate shall accrue as if no Event Determination Date had occurred with respect to Tembec to but excluding September 22, 2008 for purposes of the payment due on that date. However, a rebate of the Fixed Rate accrual on the Tembec Portion equal to the reduction in the Outstanding Swap Notional Amount (or analogous concept under the relevant Documentation) for the Incurred Loss Amount (or analogous concept under the relevant Documentation), if any, and Incurred Recovery Amount (or analogous concept under the relevant Documentation), if any, relating to the Tembec Portion for the period from and including September 9, 2008, to but excluding September 22, 2008 (or, in the case of a Transaction for which the Scheduled Termination Date is September 20, 2008, to and including September 20, 2008), will be added to the Cash Settlement Amount to be paid by Seller to Buyer on the Cash Settlement Date determined pursuant to this protocol. Notwithstanding anything to the contrary in the Documentation, the Cash Settlement Amount (if any) in respect of the Tembec portion shall be payable on the Cash Settlement Date determined pursuant to this protocol.
- (e) *Recovery Lock Transactions.* The Documentation relating to Recovery Lock Transactions is amended as follows:

- (i) *Accruals.* Notwithstanding anything to the contrary in the Documentation, the Fixed Rate shall accrue as if no Event Determination Date had occurred with respect to Tembec to but excluding September 22, 2008 for purposes of the payment due on that date. However a rebate of the Fixed Rate accrual for the period from and including September 9, 2008, to but excluding September 22, 2008 (or, in the case of a Transaction for which the Scheduled Termination Date is September 20, 2008, to and including September 20, 2008), will be added to the Cash Settlement Amount to be paid to Buyer on the Cash Settlement Date, or deducted from the Cash Settlement Amount to be paid to Seller on the Cash Settlement Date, as applicable.
  - (ii) *Satisfaction of Conditions to Settlement.* The Conditions to Settlement in each Recovery Lock Transaction are further amended by eliminating any reference to Seller's right to deliver any notice to Buyer as a result of Buyer failing to deliver a Notice of Physical Settlement.
  - (iii) *Settlement Terms.* Unless an Auction Cancellation Event occurs, and notwithstanding anything to the contrary in the Documentation specifying Physical Settlement or Partial Cash Settlement, Tembec or the Tembec Portion, as applicable, shall settle as if Cash Settlement were deemed to apply pursuant to Section 9.3, 9.4, 9.5 or 9.6 of the Credit Definitions, but shall otherwise settle in accordance with the relevant Documentation, provided that the Final Price will be determined as described in the Auction Methodology set forth in Exhibit 3 to this Protocol and, notwithstanding Section 7.4 of the Credit Definitions, the Calculation Agent will not be obligated to provide any notice with respect to Quotations or the calculation of such Final Price.
- (f) ***Nth to Default Transactions.*** The Documentation relating to Nth to Default Transactions is amended as follows:
- (i) *Accruals.* Notwithstanding anything to the contrary in the Documentation, the Fixed Rate shall accrue as if no Event Determination Date had occurred with respect to Tembec to but excluding September 22, 2008 for purposes of the payment due on that date. However a rebate of the Fixed Rate accrual for the period from and including September 9, 2008, to but excluding September 22, 2008 (or, in the case of a Transaction for which the Scheduled Termination Date is September 20, 2008, to and including September 20, 2008), will be added to the Cash Settlement Amount to be paid to Buyer on the Cash Settlement Date.
  - (ii) *Satisfaction of Conditions to Settlement.* The amendments to the Documentation set forth in (1)(c)(ii) above will be effected so that an Event Determination Date will be deemed to have occurred with respect to Tembec on the Common Event Determination Date and, if Tembec is the Nth Reference Entity for which an Event Determination Date has occurred, the Conditions to Settlement for the Transaction shall be deemed to be satisfied.
- (g) ***Single Name Swaptions.*** The Non-Index Documentation relating to each Single Name Swaption is amended as follows:
- (i) *No Additional Notice Deliveries.* Except for the deemed notices provided in clause (e)(ii) below, each party agrees not to deliver any Credit Event Notice, Notice of Publicly Available Information or Notice of Physical Settlement with respect to Tembec, and any such notice delivered shall be void and have no effect.
  - (ii) *Satisfaction of Conditions to Settlement.* A "Knock-Out Credit Event" (or similar term, as applicable, in the relevant Non-Index Documentation) will be deemed to have

occurred with respect to Tembec and the Single Name Swaption shall be deemed to be terminated.

- (h) **Portfolio Swaptions.** The Non-Index Documentation relating to each Portfolio Swaption is amended to provide that (x) no Accrued Amount in respect of the Tembec Portion will be deducted from the Strike Adjustment Amount ("Accrued Amount" and "Strike Adjustment Amount" having the meanings specified in the Swaption template (Master Confirmation as Underlying) published by CDS IndexCo LLC, dated March 20, 2007, or, if the relevant Portfolio Swaption is documented under another form of Non-Index Documentation, meanings analogous thereto, to the extent applicable) and (y) the related Underlying CDS is deemed to be amended as follows:
- (i) **Accruals.** Notwithstanding anything to the contrary in the Documentation for the relevant Portfolio Swaption or the documentation for the underlying credit default swap, (A) if the Portfolio Swaption is effectively exercised on or prior to the third Business Day prior to the Cash Settlement Date (x) the seller of protection in the underlying transaction will pay to the buyer of protection in the underlying transaction, on the third business day after the day on which such Portfolio Swaption is effectively exercised, the Fixed Amount in respect of Tembec (as defined in the documentation for the underlying credit default swap transaction) for the Fixed Rate Payer Calculation Period beginning on the Fixed Rate Payer Payment Date for the underlying transaction immediately prior to the date on which the Portfolio Swaption is effectively exercised and ending on, and including, the Common Event Determination Date and (y) the buyer of protection in the underlying transaction will not pay to the seller in such underlying transaction any Fixed Amount in respect of Tembec and (B) if the Portfolio Swaption is effectively exercised after the third Business Day prior to the Cash Settlement Date, neither party will pay to the other any Fixed Amount in respect of Tembec.
- (ii) **Settlement Terms.** Unless an Auction Cancellation Event occurs, and notwithstanding anything to the contrary in the documentation for the underlying credit default swap that may specify Physical Settlement or Partial Cash Settlement, the Tembec Portion shall settle as if the Settlement Method specified in such documentation were Cash Settlement but shall otherwise settle in accordance with the relevant documentation for the underlying transaction, provided that (A) the Final Price with respect to the Tembec Portion of the underlying credit default swap transaction will be determined as described in the Auction Methodology set forth in Exhibit 3 to this Protocol, (B) notwithstanding Section 7.4 of the Credit Definitions, the Calculation Agent will not be obligated to provide any notice with respect to Quotations or the calculation of such Final Price, (C) if the Portfolio Swaption is effectively exercised on or prior to the third Business Day prior to the Cash Settlement Date, the seller of protection in the underlying transaction will pay to the buyer of protection in the underlying transaction, on the Cash Settlement Date, the Cash Settlement Amount in respect of Tembec, less the Fixed Amount in respect of Tembec (as defined in the documentation for the underlying credit default swap transaction) for the Fixed Rate Payer Calculation Period beginning on the Fixed Rate Payer Payment Date for the underlying transaction immediately prior to the date on which the Portfolio Swaption is effectively exercised and ending on, and including, the Common Event Determination Date, and (D) if the Portfolio Swaption is effectively exercised after the third Business Day prior to the Cash Settlement Date, the seller of protection in the underlying transaction will pay to the buyer of protection in the underlying transaction, on the third Business Day after such Exercise Date, the Cash Settlement Amount in respect of Tembec.