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Memorandum

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Eurozone Exit - ISDA Documentation Considerations

1998 FX and Currency Option Definitions

As part of ISDA's continuing discussions with its members in relation to the Eurozone crisis, and in particular ISDA's Eurozone Contingency Discussion Group, ISDA has arranged for a number of product specific papers to be produced to assist members in their Eurozone contingency planning in the event that an EU member state were to exit from the Eurozone (the "**Departing State**"). The papers highlight various issues that may arise as a result of redenomination legislation, capital and exchange controls and unscheduled bank holidays in relation to a Departing State.

This paper discusses the 1998 FX and Currency Option Definitions (the "**FX Definitions**").

One of the challenges in analysing the effects of a Eurozone exit is that there is no legal mechanism for such an exit in existing EU legislation. It is not clear to what extent such an exit would be consensual or unilateral, or would or would not be supported by EU legislation. For the purposes of the analysis in this paper, however, the following assumptions have been made:

(a) the Departing State passes a law (the "**New Currency Law**") redenominating all obligations owed by and to it from the Euro into a new currency (the "**New Currency**");

(b) the Departing state exits without EU consensus and over-arching EU legislation recognising the redenomination of debts effected by the Departing State's New Currency Law;

(c) the Departing state introduces new capital and exchange controls; and

(d) the Departing state designates additional bank holidays for the purposes of accommodating the redenomination.

*This guidance relates to foreign exchange transactions under an ISDA Master Agreement in relation to which the FX Definitions have been incorporated ("**FX Transactions**"). To the extent foreign exchange transactions have been entered into using different master agreements or have incorporated different or additional definitions (eg the cross-currency provisions in the 2006 ISDA Definitions) different issues and a different analysis may apply.*

Executive Summary

- The FX Definitions were developed to address a number of risks that had been identified in FX Transactions relating to emerging market currencies. They were not drafted with a Eurozone break-up in contemplation, and as such a number of the provisions do not fit well with the circumstances that might exist following a member state (the "**Departing State**") departing the Eurozone and potentially introducing capital and exchange controls.

- In particular, the **Disruption Events set out in the FX Definitions are unlikely to be relevant for the majority of EUR/[FX] Transactions** as Disruption Events (save for Price Source Disruption for Non-Deliverable Transactions) need to be specified in the relevant Confirmation to apply and it is expected that parties will not have considered specifying Disruption Events to apply to EUR/[FX] transactions.

- The settlement of FX Transactions involving Euros will require TARGET2 to be open but will not otherwise be affected by bank holidays in a Departing State (regardless of whether or not one of the parties is located in a Departing State);

- For Non-Deliverable Transactions the Valuation Date must be a day on which TARGET2 is open and a Business Day in the location of the parties – this may be affected by additional bank holidays imposed by the Departing State;

- If as a result of additional bank holidays the scheduled Valuation Date is not a Business Day, unless otherwise specified in the relevant Confirmation, the Valuation Date will be subject to the Preceding Business Day Convention. Moving the Valuation Date to a previous Business Day may have a significant effect on the rate used for the relevant FX Transaction and it will be important to consider the impact of this convention in connection with any hedging transactions;

- The only Disruption Event that applies automatically (i.e. without the parties so specifying in the relevant confirmation relating to the FX Transactions) is Price Source Disruption, which applies to Non-Deliverable Transactions only;

- If EUR/[FX] markets remain generally open (outside of the Departing State) it is difficult to imagine Price Source Disruption applying in relation to the Euro, unless there is a complete break-up of the Euro;

- If Market Participants intend for Disruption Events to apply to EUR/[FX] Transactions with counterparties in potential Departing States, certain Disruption Event provisions may require amendment.

Suggested Actions for ISDA Members

- Determine FX Transactions that have been entered into with parties located in a potential Departing State.
- Review the Confirmations for FX Transactions to consider whether any additions or amendments to Business Days apply and whether any Disruption Events have been specified.
- If any FX Transaction is a Non-Deliverable Transaction, consider whether Valuation Dates would be subject to the Preceding Business Day convention, how the Settlement Rate is determined and whether any Disruption Fallbacks have been specified or are applicable.
- Consider any potential mis-matches where FX Transactions are hedging other currency obligations.

For the purposes of this note we have focussed on the fallbacks and presumptions that would apply if the Confirmations relating to the FX Transactions are silent on the relevant provisions or definitions. The issues raised in this note assume that the obligations under any FX Transaction in respect of which the Euro is one of the currencies in the currency pair (a "**EUR/[FX] Transaction**") are not redenominated into the local currency of a Departing State and that the Euro continues to exist as the single European currency.

Given the nature of the asset class and the market practice that accompanies FX Transactions, the analysis below should be seen as only a starting point for the discussion of the impact of a Eurozone exit on FX Transactions. The two areas that are focussed on are: (i) the effect a Eurozone exit may have on Business Days for FX Transactions, and (ii) the effect a Eurozone exit may have on disruptions under FX Transactions.

1. ISSUES RELATING TO BUSINESS DAYS

	Relevant location for determining Business Day
Settlement dates	Principal Financial Center (TARGET2, if Euro)
Valuation dates	Principal Financial Center (TARGET2, if Euro) **And** Locations of Offices of both parties
Exercise dates	Location of Office of Seller
Settlement Rate Option definitions	Principal Financial Center (TARGET2, if Euro)

Any other purpose	Locations of Offices of both parties

1.1 Settlement Dates

1.1.1 Summary

If a Settlement Date falls on a day that is a bank holiday in the Departing State this should not adjust the Settlement Date for payments in Euros provided the TARGET2 system is "open".

1.1.2 Issues relating to Settlement Dates

A member state seeking to depart from the Eurozone is likely to designate one or more additional Bank Holidays to manage the implementation of the new currency and any capital and exchange controls. The Settlement Date for payments to be made in Euros, however, will not be affected unless TARGET2 is closed, whether or not a party to the FX Transaction is resident in the Departing State.

SETTLEMENT DATE

*"**Business Day**" means for purposes of:*

(a) the definition of Settlement Date and Premium Payment Date,

(i) a day on which commercial banks effect…delivery of the currency to be delivered…in accordance with the market practice of the foreign exchange market in the place(s) specified for that purpose in a Confirmation…, or

(ii) if a place is not so specified,

(A) a day on which commercial banks effect (or, but for the occurrence of any Disruption Event applicable to a Transaction, would have effected) delivery of the currency to be delivered on such Settlement Date or Premium Payment Date, respectively, in accordance with the market practice of the foreign exchange market in the Principal Financial Center of such currency;...

(C) a day that is a Euro Settlement Date, where the currency to be delivered on such Settlement Date or Premium Payment Date, respectively, is euro'….

Section 1.1 of the FX Definitions

*"**Euro Settlement Date**" means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System is open.*

Section 1.11 of FX Definitions (as amended on June 5, 2008 by EMTA, Inc., ISDA and FXC)

What does it mean for TARGET2 to be "open"?

Whether or not TARGET2 will be open on the additional bank holidays may be a matter of interpretation given the developments connected with the Eurozone exit and may be a matter on which market participants would seek clarification from the ECB and/or come to an agreed position.

In general, the opening of TARGET2 is not linked to the Bank Holidays of any individual member states (TARGET2 is closed on weekends, New Year's Day, Good Friday, Easter Monday, 1 May, Christmas Day, and Boxing Day). The original TARGET system linked individual existing national gross settlement systems; TARGET has since been replaced by TARGET2, an EU wide system to which each of the national gross settlement systems connect. If a national gross settlement system was not connected to the TARGET2 system on a given day, there may be an argument that TARGET2 is not "open". It is also possible that the ECB may take other actions in relation to TARGET2 which could affect the position.

How is a Settlement Date adjusted?

If a Settlement Date is not a Business Day (ie where the currency to be delivered is Euro, if TARGET2 is not open) then, unless otherwise specified in the relevant Confirmation, the Settlement Date will be adjusted in accordance with the Following Business Day Convention (see the diagram in the Appendix to this paper).

SETTLEMENT DATE - BUSINESS DAY CONVENTION

*"**Settlement Date**" means, in respect of a Transaction, the date (a) specified as the Settlement Date or the Payment Date, as the case may be, or otherwise determined as provided in the related Confirmation, or (b) determined in accordance with Section 5.2(c)(x)(A) or Section 5.2(c)(xi), subject to adjustment in accordance with the Following Business Day Convention unless another Business Day Convention is specified to be applicable to that Settlement Date.*

*"**Business Day Convention**" means the convention for adjusting any relevant date if it would otherwise fall on a day that is not a Business Day. The following terms, when used in conjunction with the term "Business Day Convention" and a date, will mean that an adjustment will be made if that date would otherwise fall on a day that is not a Business Day, so that:*

(a) if "Following" is specified, that date will be the first following day that is a Business Day;

(b) if "Modified Following" or "Modified" is specified, that date will be the first following day that is a Business Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day;

(c) if "Nearest" is specified, that date will be the first preceding day that is a Business Day, if the relevant date otherwise falls on a day other than a Sunday or a Monday, and will be the first following day that is a Business Day, if the relevant date otherwise falls on a Sunday or a Monday; and

(d) if "Preceding" is specified, that date will be the first preceding day that is a Business Day.

Section 1.2 of the FX Definitions

For currencies other than the Euro, the FX definitions seek to remove "embedded postponements" which might be created by Disruption Events, stating that a Business Day is a day on which commercial banks are open or "but for the occurrence of any Disruption Event applicable to a Transaction, would have been open" in the Principal Financial Center (see sub-paragraph (a)(ii)(A) of the definition of Business Day in text box entitled *"Settlement Date"*). The intention being that where parties have elected for prescribed fallbacks to apply for certain Disruption Events, the day on which these events are tested as "continuing" should not be postponed because the applicable Disruption Events have caused commercial banks to close.

Where the payments are to be made in Euros, the language providing the solution to the "embedded postponement" is not included in the provisions for determining a Business Day. As a result, the closure of the TARGET2 system may, subject to the discussion in the paragraph below, adjust (in accordance with the Following Business Day Convention (see the text box entitled *"Settlement Date – Business Day Convention"*)) the date on which the parties are to test whether or not a Disruption Event is continuing (whereas a similar disruption relating to a non-Euro currency would not adjust the Settlement Date and therefore the test for whether a Disruption Event is continuing would be performed on the scheduled Settlement Date).

The Disruption Event provisions do, however, provide a mechanism for addressing the occurrence of banking moratoriums or other similar events which would not otherwise fall within a Disruption Event (noting that the solution to the "embedded postponement" in the definition of "Business Day" only relates to actual Disruption Events). The last paragraph of Section 5.1(f) provides that a Business Day for the purposes of a Settlement Date shall include a day on which commercial banks would have effected delivery of the relevant currency but for the occurrence of a banking moratorium in the Event Currency Jurisdiction (Event Currency Jurisdiction is discussed further in paragraph 2.2 below) or other similar event related to an applicable Disruption Event.

In practice, the question of whether the market conditions result in a Disruption Event (and the Disruption Fallbacks should apply) or a non-Business Day (and the Business Day Convention adjustments should apply) under the FX Definitions may not be critical, as market participants have agreed in previous currency crisis situations that days were non-Business Days and should be subject to adjustment, despite the fact the circumstances generally gave rise to "Disruption Events" (e.g. Indonesia in 1998).

1.2 Valuation Dates and Exercise Dates

1.2.1 Summary

If a Valuation Date or Exercise Date falls on a day that is a bank holiday in a Departing State, one of the parties is transacting through an office located in the Departing State, and no other place is specified in the relevant Confirmation either generally or specifically for Valuation Dates and Exercise Dates:

(a) the Valuation Date will be adjusted in accordance with the Preceding Business Day Convention;

(b) the Specified Exercise Date or Expiration Date will be adjusted in accordance with the Following Business Day Convention.

Valuation Dates are only relevant to Non-Deliverable Transactions.

The Preceding Business Day Convention in relation to Valuation Dates can cause problems for hedging arrangements and end users and has been previously discussed by ISDA/EMTA in the context of emerging market transactions[1]. The recommended market practice in such markets has been to introduce the concept of a "Scheduled Valuation Date" which is subject to the Following Business Day Convention if an "Unscheduled Holiday" occurs.

1.2.2 Issues relating to Valuation Dates and Exercise Dates

If a Departing State designates additional bank holidays and the office of a party is located in the Departing State, the additional bank holidays will not be Business Days for the purposes of valuation dates or dates relating to the exercise of options.

VALUATION DATE

*"**Business Day**" means for the purposes of…*

(b) the definition of Valuation Date or Averaging Date,

(i) a day on which commercial banks are open (or, but for the occurrence of any Disruption Event applicable to a Transaction, would have been open) for business (including dealings in foreign exchange in accordance with the market practice of the foreign exchange market) in the place(s) specified for that purpose in a Confirmation generally or specifically for purposes of the Valuation Date or Averaging Date, respectively, or

(ii) if a place is not so specified,

(A) a day on which commercial banks are open (or, but for the occurrence of any Disruption Event applicable to a Transaction, would have been open) for business (including dealings in foreign exchange in accordance with the market practice of the foreign exchange market) in the Principal Financial Center of the Reference Currency or, in the case of a Currency Option Transaction where such a currency is not specified, the Call Currency and the Put Currency, and the places where the offices through which each party is transacting are located, as specified in a Confirmation;…

(C) a day that is a Euro Settlement Date and a Business Day in the places where the offices through which each party is transacting are located, where the payment obligation in respect of the Valuation Date or Averaging Date, respectively, is to be made in, or calculated by reference to, euro;

(c) the definition of Exercise Date, Specified Exercise Date, Exercise Period and Expiration Date, in the case of a Currency Option Transaction,

(ii) a day on which commercial banks are open for business…in the place(s) specified for that purpose in a Confirmation…, or

(iii) if a place is not so specified, a day on which commercial banks are open for business (including dealings in foreign exchange in accordance with the market practice of the foreign exchange market) in the place where the office through which Seller is transacting is located, as specified in a Confirmation;

Section 1.1 of the FX Definitions

[1] Most notably in the User's Guide to NDF Market Practices.

The relevant dates will be adjusted in accordance with the Business Day Convention if so specified in the relevant Confirmation, or if none is specified, the Preceding Business Day Convention for Valuation Dates and Averaging Dates, and the Following Business Day Convention for Exercise Dates.

For EUR/[FX] Transactions that do not involve a party located in the Departing State, provided TARGET2 is open, there will be no adjustment to the Valuation Date, Averaging Dates or Exercise Dates.

VALUATION DATE - BUSINESS DAY CONVENTION

(j) *"Valuation Date" means each date (i) specified as the Valuation Date or otherwise determined as provided in the related Confirmation, or (ii) determined in accordance with Section 5.1(d)(vi) or Section 5.2(c)(x)(A), which is a day in respect of which a Spot Rate is to be determined for purposes of determining the Settlement Rate, subject to adjustment in accordance with the Preceding Business Day Convention unless another Business Day Convention is specified to be applicable to that Valuation Date. Unless otherwise specified in the related Confirmation, the Valuation Date will be, (i) in respect of an FX Transaction, two Business Days prior to the Settlement Date and (ii) in respect of a Currency Option Transaction, the Exercise Date.*

Section 1.10 of the FX Definitions

The Preceding Business Day Convention will cause the relevant date for valuation to be moved to the first preceding date that is a Business Day. A number of market initiatives have sought to address the problems caused by the Preceding Business Day Convention for Valuation Dates, but were largely focussed on emerging market FX transactions:

(a) EMTA have produced a Users Guide for NDF Market Practice, recommending amendments to the definition of Valuation Date and amended template confirmations[2];

(b) Additional ISDA provisions for use with Deliverable Currency Disruption Events as of November 2008 – providing for Non-Deliverable settlement terms[3] where a Deliverable Currency Disruption

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2 The EMTA User Guide for NDF Market Practice suggests the following language is inserted into Confirmations:

"Valuation Date: [*DATE CERTAIN*] ("**Scheduled Valuation Date**"), subject to adjustment in accordance with the Preceding Business Day Convention; provided, however, that the adjustment shall be made in accordance with the Following Business Day Convention in the event of an Unscheduled Holiday."

""**Unscheduled Holiday**" shall mean, for the purpose of this Transaction, that a day is not a Business Day and the market was not aware of such fact (by means of a public announcement or by reference to other publicly available information) until a time later than 9:00 a.m. local time in the Principal Financial Center(s) of the Reference Currency two Business Days prior to the Scheduled Valuation Date."

"In the event the Scheduled Valuation Date becomes subject to the Following Business Day Convention, and if the Valuation Date has not occurred on or before the eighth consecutive day after the Scheduled Valuation Date, then such eighth day, if a Business Day but for the Unscheduled Holiday, or the next day that would have been a Business Day but for the Unscheduled Holiday, shall be deemed to be the Valuation Date."

3 The recommended terms include the following:

Event (General/Specific Non-Transferability or Inconvertibility) has occurred.

It would only be necessary for market participants to consider the effect of these types of provisions if they have incorporated such provisions in EUR/[FX] Transactions or have entered into EUR/[FX] Non-Deliverable Transactions.

How do adjustments to Valuation Dates and Disruption Events interact?

As discussed in relation to Settlement Dates, when considering the potential adjustments to the Valuation Date it is necessary to consider whether the relevant circumstances would give rise to a Disruption Event. The intention behind the FX Definitions is that if the parties have prescribed for certain fallbacks to apply in case of Disruption Events, the Valuation Date should not be adjusted so as to cut-through the parties' intentions.

As regards the Disruption Events that may be applicable to a Non-Deliverable Transaction, Price Source Disruption will automatically apply to all Non-Deliverable Transactions (unless the parties elect otherwise) - no other Disruption Events will apply unless specified in the Confirmation. If a Disruption Event has not occurred in relation to the EUR/[FX] Transaction as a result of the additional bank holidays, a Valuation Date falling on a day on which local commercial banks are closed will adjust to the immediately preceding Business Day (see the text box entitled *"Valuation Date – Business Day Convention"*).

The "embedded postponement" discussion for Settlement Dates in paragraph 1.1.2 above also applies to Valuation Dates. Section 5.1(f) provides that for the purposes of asking the question "Is a Disruption Event continuing on the Valuation Date?" it is necessary to determine whether commercial banks would have been open in the relevant jurisdiction but for the closure of banks caused by a banking moratorium or other similar event related to an applicable Disruption Event. If the commercial banks would have been open but for such

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"Deferral Period for Unscheduled Holiday: In the event the Scheduled Valuation Date becomes subject to the Following Business Day Convention after the occurrence of an Unscheduled Holiday, and if the Valuation Date has not occurred on or before the number of consecutive calendar days, as specified in the Fallback Matrix under the column Deferral Period for the applicable Currency Pair, after the Scheduled Valuation Date (any such period being a "**Deferral Period**") , then the next day after the Deferral Period that would have been a Business Day but for the Unscheduled Holiday, shall be deemed to be the Valuation Date."

"Valuation Postponement for Price Source Disruption: "**Valuation Postponement**" means, for purposes of obtaining a Settlement Rate, that the Spot Rate will be determined on the Business Day first succeeding the day on which the Price Source Disruption ceases to exist, unless the Price Source Disruption continues to exist (measured from the date that, but for the occurrence of the Price Source Disruption, would have been the Valuation Date) for a consecutive number of calendar days equal to the Maximum Days of Postponement. In such event, the Spot Rate will be determined on the next Business Day after the Maximum Days of Postponement in accordance with the next applicable Disruption Fallback."

circumstances, for the purposes of determining whether a Disruption Event is continuing, the Valuation Date will be the scheduled Valuation Date.

What is the effect of the Preceding Business Day Convention for Valuation Dates?

The Preceding Business Day Convention may be a concern for parties that are using the relevant Non-Deliverable Transaction to hedge positions or assets which do not follow this convention or for end users, as there may be a mismatch caused by the differing EUR/[FX] rate on the preceding Business Day and the EUR/[FX] rate that will be available in the market following a Departing State leaving the Eurozone.

A potential area of debate arises if the unscheduled bank holiday for the Departing State falls in between the Valuation Date and the Settlement Date. Under the FX Definitions the Valuation Date is (unless otherwise specified) two Business Days prior to the Settlement Date. If one of those scheduled Business Days is not a Business Day, should the Valuation Date move back to the date that is two Business Days prior to the Settlement Date? Given that neither of the parties could have known at the time that the unscheduled bank holiday would occur and that the Calculation Agent will have validly determined the Settlement Rate for the date all parties thought was the Valuation Date, it would seem hard to argue that the parties intended the intervening bank holiday to change the date on which the Settlement Rate is determined (see the diagram in the Appendix to this paper).

In relation to FX Transactions with parties located in a Departing State, if market participants were keen for a Valuation Date falling on an additional bank holiday to be subject to the Disruption Fallbacks (e.g. Calculation Agent discretion) or Valuation Date postponement, rather than the Valuation Date being subject to the Preceding Business Day Convention (assuming another business day convention has not been specified in the Confirmation) this could be agreed by parties (either bilaterally or via industry bodies) at the time or shortly thereafter in a similar manner as for disruptions caused by the closure of the Argentinean FX markets in December 2001/January 2002 or the Indonesian Republic currency crisis in 1998.

2. ISSUES TO CONSIDER IN RELATION TO DISRUPTION

2.1 Disruption Events

2.1.1 Summary

- Unless specified in a Confirmation, no Disruption Events apply to FX Transactions, other than Price Source Disruption (for a Non-Deliverable Transaction only).

- It is hard to see how price source related Disruption Events would be triggered by redenomination and/or capital and exchange control legislation in a single Departing State, as this should not affect the general availability of EUR/[FX] price sources.

- If a Disruption Event does apply, events that might otherwise have given rise to termination rights for Illegality or Force Majeure may be subject to Disruption Fallbacks under the FX Definitions instead.

2.1.2 Issues relating to Disruption Events

How would Disruption Events apply generally?

Parties may specify Disruption Events relating to one of the currencies in the FX currency pair, the occurrence of which will give rise to specified fallbacks. To the extent the parties do not specify any Disruption Events (or perhaps the FX Transaction is not documented) none should apply unless the transaction is a Non-Deliverable Transaction, in which case Price Source Disruption will apply (see Section 5.1(e)(i) in text box entitled *"Disruption Events"*). The Disruption Events can broadly be grouped into four categories: (i) price source availability, (ii) events related to inconvertibility or non-transferability, (iii) events relating to local government/issuer action, and (iv) material changes. If Disruption Events apply to an FX Transaction and one of the specified Disruption Events is continuing on a Valuation Date or Settlement Date, the terms of the FX Transaction will be (automatically) subject to the Disruption Fallbacks relating to that Disruption Event.

DISRUPTION EVENTS

Section 5.1. Disruption Events.

(d) When used in relation to a Transaction in conjunction with the term "Disruption Event" and for purposes of Section 5.1(e), the following terms have the indicated meanings:

(i) "Benchmark Obligation Default" means, with respect to any Benchmark Obligation, the occurrence of a default, event of default or other similar condition or event (however described) including, but not limited to, (A) the failure of timely payment in full of any principal, interest or other amounts due (without giving effect to any applicable grace periods) in respect of such Benchmark Obligation, (B) a declared moratorium, standstill, waiver, deferral, Repudiation or rescheduling of any principal, interest or other amounts due in respect of such Benchmark Obligation or (C) the amendment or modification of the terms and conditions of payment of any principal, interest or other amounts due in respect of such Benchmark Obligation without the consent of all holders of such Benchmark Obligation…

(ii) "Dual Exchange Rate" means, with respect to the Settlement Rate Option applicable to a Transaction, that the currency exchange rate specified in such Settlement Rate Option splits into dual or multiple currency exchange rates.

(iii) "General Inconvertibility" means the occurrence of any event that generally makes it impossible to convert the Event Currency into the Non-Event Currency in the Event Currency Jurisdiction through customary legal channels.

(iv) "General Non-Transferability" means the occurrence of any event that generally makes it impossible to deliver (A) the Non-Event Currency from accounts inside the Event Currency Jurisdiction to accounts outside the Event Currency Jurisdiction or (B) the Event Currency between accounts inside the Event Currency Jurisdiction or to a party that is a non-resident

of the Event Currency Jurisdiction.

(v) *"Governmental Authority Default" means, with respect to any security or indebtedness for borrowed money of, or guaranteed by, any Governmental Authority, the occurrence of a default, event of default or other similar condition or event (however described) including, but not limited to, (A) the failure of timely payment in full of any principal, interest or other amounts due (without giving effect to any applicable grace periods) in respect of any such security, indebtedness for borrowed money or guarantee, (B) a declared moratorium, standstill, waiver, deferral, Repudiation or rescheduling of any principal, interest or other amounts due in respect of any such security, indebtedness for borrowed money or guarantee or (C) the amendment or modification of the terms and conditions of payment of any principal, interest or other amounts due in respect of any such security, indebtedness for borrowed money or guarantee without the consent of all holders of such obligation….*

(vi) *"Illiquidity" means it becomes impossible to obtain a firm quote of the Settlement Rate for the Minimum Amount (either in one transaction or a commercially reasonable number of transactions that, when taken together, total the Minimum Amount) on the Valuation Date (or, if different, the day on which rates for that Valuation Date would, in the ordinary course, be published or announced by the relevant price source) or by such other date (the "Illiquidity Valuation Date") as is specified for such purpose in the related Confirmation. If an Illiquidity Valuation Date is specified for a Transaction and an Illiquidity Disruption Event occurs on such date, then for purposes of any relevant Disruption Fallbacks in Section 5.2, the Illiquidity Valuation Date will be deemed to be the Valuation Date for that Transaction.*

(vii) *"Inconvertibility/Non-Transferability" means the occurrence of any event which constitutes a General Inconvertibility Disruption Event, a General Non-Transferability Disruption Event, a Specific Inconvertibility Disruption Event and a Specific Non-Transferability Disruption Event.*

(viii) *"Material Change in Circumstance" means the occurrence of any event (other than those events specified as Disruption Events in this Section 5.1(d)) in the Event Currency Jurisdiction beyond the control of the parties to a Transaction which makes it impossible (A) for a party to fulfil its obligations under that Transaction and (B) generally to fulfil obligations similar to such party's obligations under that Transaction.*

(ix) *"Nationalization" means any expropriation, confiscation, requisition, nationalization or other action by any Governmental Authority which deprives a party to the Transaction (or any of its Relevant Affiliates), of all or substantially all of its assets in the Event Currency Jurisdiction.*

(x) *"Price Materiality" means the Primary Rate differs from the Secondary Rate by at least the Price Materiality Percentage.*

(xi) *"Price Source Disruption" means it becomes impossible to obtain the Settlement Rate on the Valuation Date (or, if different, the day on which rates for that Valuation Date would, in the ordinary course, be published or announced by the relevant price source).*

(xii) *"Specific Inconvertibility" means the occurrence of any event that makes it impossible for a party to the Transaction (or the Relevant Class, if any) to convert the Minimum Amount of the Event Currency into the Non-Event Currency in the Event Currency Jurisdiction, other than where such impossibility is due solely to the failure by that party (or Relevant Class, as the case may be) to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after the Trade Date of the Transaction and it is impossible for such party (or Relevant Class, as the case may be), due to an event beyond the control of that party (or Relevant Class), to comply with such law, rule* *or regulation).*

(xiii) *"Specific Non-Transferability" means the occurrence of any event that makes it impossible for a party to the Transaction (or the Relevant Class, if any) to deliver (A) the Non-Event Currency from accounts inside the Event Currency Jurisdiction to accounts outside the Event Currency Jurisdiction or (B) the Event Currency between accounts inside the Event Currency Jurisdiction or to a party that is a non-resident of the Event Currency Jurisdiction, other than where such impossibility is due solely to the failure by that party (or Relevant Class, as the case may be) to comply with any law, rule or regulation enacted by any Governmental Authority (unless such law, rule or regulation is enacted after the Trade Date of the Transaction and it is impossible for such party (or Relevant Class, as the case may be), due to an event beyond the control of that party (or Relevant Class), to comply with such law, rule or regulation).*

(e) *Unless the parties otherwise provide in a Confirmation:*

(i) *if the parties do not specify any Disruption Event in a Confirmation, then (A) in respect of a Deliverable Transaction, no Disruption Events will be deemed to have been specified and (B) in respect of a Non-Deliverable Transaction, Price Source Disruption will be deemed to have been specified…*

(f) *If, after the Trade Date of a Transaction, a Disruption Event applicable to that Transaction has occurred and is continuing in respect of that Transaction,*

(i) *in the case of any Disruption Event other than Dual Exchange Rate, Illiquidity, Material Change in Circumstance, Price Materiality and Price Source Disruption, on the day that is the Settlement Date for that Transaction; …*

(iv) *in the case of Material Change in Circumstance, on the day that is the Valuation Date (or, if different, the day on which rates for that Valuation Date would, in the ordinary course, be published or announced by the relevant price source) or the Settlement Date for that Transaction,*

then the Settlement Rate for that Transaction will be determined or the Transaction will be settled, as the case may be, in accordance with the terms of the first applicable Disruption Fallback pursuant to Section 5.2. For purposes of this subsection (f) only, the definition of Business Day in Section 1.1 as applied to the definition of Valuation Date and Settlement Date will include any day on which, in the case of a Valuation Date, commercial banks would have been open or, in the case of a Settlement Date, commercial banks would have effected delivery of the currency to be delivered, but for the occurrence in the Event Currency Jurisdiction of a banking moratorium or other similar event related to any Disruption Event applicable to a Transaction.

(g) *If "Calculation Agent Determination of Disruption Event" is specified as applicable in a Confirmation, the Calculation Agent, after consultation with the parties or the other party, will determine in good faith whether a Disruption Event applicable to a Transaction has occurred.*

What Disruption Events might be triggered by a Eurozone exit?

The provisions relating to Disruption Events may have limited application in EUR/[FX] Transactions following a Eurozone exit, even if one of the parties is located in a Departing State.

Disruptions Events were included in the FX Definitions primarily to address risks involving emerging market currencies. The departure of one or more countries from a multi-jurisdiction single currency (such as the Euro) was not contemplated by the FX Definitions and no Disruption Events specifically address such a scenario. More generally, the Disruption Events that were included in the FX Definitions were not expected to be relevant to EUR/[FX] Transactions (we discuss below why the definition of Event Currency creates an additional hurdle when trying to apply Disruption Events to EUR/[FX] Transactions). It is likely that the market practice for EUR/[FX] Transactions has been not to include any specified Disruption Events.

The one Disruption Event that applies automatically, in relation to Non-Deliverable Transactions only (unless designated as not applicable by the parties), is Price Source Disruption. However, given the threshold required to trigger Price Source Disruption ("it becomes *impossible* to obtain the Settlement Rate on the Valuation Date") and the number of financial centres that could provide EUR/[FX] rates it is hard to see how the Calculation Agent would find it impossible to obtain a Settlement Rate in circumstances where the Euro continues as the single European currency. Only in scenarios closer to a full Euro break-up might it become "impossible" to obtain a EUR/[FX] rate on a Valuation Date.

If no Disruption Events are applicable but the contract is unable to be performed, will there be a termination?

If an event that would otherwise constitute an Illegality or, if applicable, a Force Majeure under the terms of the ISDA Master Agreement (eg the introduction of capital or exchange controls which make it illegal to transfer the Event Currency) constitutes a Disruption Event, the fallbacks specified (or presumed by the FX Definitions) will apply rather than the Illegality or Force Majeure provisions.

ILLEGALITY V. DISRUPTION EVENTS (1992 ISDA MASTER AGREEMENT)

(c) If the parties have executed:

(i) an ISDA Master Agreement or a 1987 Interest Rate and Currency Exchange Agreement, as amended and supplemented, (each a "Master Agreement") which governs a Transaction and if an event or circumstance that would otherwise constitute or give rise to an Illegality (as such term is defined in the Master Agreement) or, if applicable, an Impossibility (as such term is defined in the Schedule to the Master Agreement) also constitutes a Disruption Event that is applicable to that Transaction, then such event or circumstance will be treated as a Disruption Event and will be deemed not to constitute an Illegality or Impossibility, as the case may be, for purposes of these Definitions and that Master Agreement; or …

Section 5.1 of the FX Definitions

ILLEGALITY & FORCE MAJEURE V. DISRUPTION EVENTS (2002 ISDA MASTER AGREEMENT)

(c) If the parties have executed:

(i) an ISDA Master Agreement, as amended and supplemented, which governs a Transaction, and if an event or circumstance that would otherwise constitute or give rise to an Illegality or a Force Majeure Event (as such terms are defined in the ISDA Master Agreement) also constitutes a Disruption Event that is applicable to that Transaction, then, for so long as that is the case, such event or circumstance will be treated as a Disruption Event and will be deemed not to constitute an Illegality or a Force Majeure Event, as the case may be, for purposes of these Definitions and that ISDA Master Agreement; or

...

Section 5.1 of the FX Definitions

To the extent Disruption Events are not applicable, if circumstances constituting Illegality or, if applicable, Force Majeure exist, the FX Transaction will be subject to the Illegality and/or Force Majeure provisions in the ISDA Master Agreement which set out the conditions for the parties to designate an Early Termination Date and terms upon which the Early Termination Amount is to be calculated.

Should Disruption Events be included in EUR/[FX] Transactions?

The motivation for incorporating Disruption Event provisions into FX Transactions is to enable parties to specify fallbacks that would apply in place of other provisions (ie instead of the provisions that would adjust the Valuation Date or Settlement Date, or provisions in the ISDA Master Agreement relating to Illegality or, if applicable, Force Majeure).

An example of the fallbacks that are available in the FX Definitions:

- "Settlement Postponement": the Settlement Date is postponed until the earlier of the first Business Day after the Disruption Event ceases or the end of the "Maximum Days of Disruption" specified in the Confirmation.

- "Calculation Agent Determination of Settlement Rate": this fallback applies to Non-Deliverable Transactions and allows the Calculation Agent to determine the Settlement Price on a Valuation Date where it is otherwise impossible to determine.

- "No Fault Termination": this fallback seeks to provide close-out at mid-market parties (based on the 1992 ISDA Master Agreement, assuming two affected parties, and Loss).

In a number of cases the Disruption Fallbacks may either be unhelpful or provide no real difference to the parties' positions (e.g. in an FX Transaction where no Settlement Rate is specified, the rate will already fall to be determined by the Calculation Agent (see the definitions of Settlement Rate and Spot Rate in text box entitled *"Settlement Rate"*), and if the 2002 ISDA Master Agreement applies, the Illegality and/or Force Majeure provisions will already provide for a mid-market termination of the affected transactions only).

SETTLEMENT RATE

(c) *"**Settlement Rate**" means, for any Valuation Date in respect of a Settlement Date, the currency exchange rate equal to (i) the Settlement Rate specified or otherwise determined as provided in the related Confirmation or, (ii) if a Settlement Rate or a means of determining a Settlement Rate is not so specified, the Spot Rate for that Valuation Date.*

(e) *"**Spot Rate**" means, for any Rate Calculation Date, the currency exchange rate determined in accordance with the specified (or deemed specified) Settlement Rate Option, or if a Settlement Rate Option is not specified (or deemed specified), the currency exchange rate at the time at which such rate is to be determined for foreign exchange transactions in the relevant Currency Pair for value on the Settlement Date, as determined in good faith and in a commercially reasonable manner by the Calculation Agent.*

Section 1.16 of the FX Definitions

However, there may be circumstances in which parties would prefer a Disruption Fallback to apply. For example, following a Departing State leaving the Euro there may be exchange controls for an interim period on currency transactions for parties located in a Departing State. If these exchange controls affect the ability of a party to meet its settlement obligations, rather than the Illegality or, if applicable, Force Majeure provisions applying under the ISDA Master Agreement, parties may prefer the settlement to be postponed until the exchange controls are lifted (perhaps subject to a maximum period of postponement)[4]. In such circumstances, parties might look to apply one of the non-transferability disruption events (although the standard Disruption Fallback for these events is "Local Currency Substitute" and only if this is not possible does the secondary fallback, Settlement Postponement, apply).

Some Disruption Events that parties might want to consider in the context of a redenomination (and any associated capital and exchange controls) are:

4 The Illegality and Force Majeure provisions under the 2002 ISDA Master Agreement provide for a short waiting period after the occurrence of the Illegality or Force Majeure, as applicable, before the parties may terminate. If the Disruption Events provisions applied, the Settlement Postponement could provide a longer period before there was a termination, in circumstances such as the Non-Transferability Disruption Event.

If the Illegality or Force Majeure provisions apply, the fact that the relevant illegality or force majeure occurred prior to the Settlement Date would not matter, the Illegality or Force Majeure provisions are triggered if an event occurs which would make it illegal or impossible (as applicable) to perform any future obligation on the day the illegality or force majeure event occurred. If the Disruption Event provisions apply, and the relevant event ceases prior to the Valuation Date or Settlement Date, the Disruption Event provisions would allow the FX Transaction to value/settle in the ordinary manner - the Disruption Event is required to be continuing on the relevant Valuation Date or Settlement Date for the Disruption Fallbacks to apply. Although it is worth noting that the Illegality and/or Force Majeure provisions will only apply at the option of the parties, whereas the Disruption Events provisions will apply automatically.

- *Benchmark Obligation Default*: this event might be used where the FX Transaction is intended to hedge the currency risk on a particular obligation. The event uses similar concepts to those found in a credit derivative transaction. If the parties specify that this event applies and specify a Benchmark Obligation, on a default of the obligation (or restructuring or moratorium) the Disruption Event will occur, and if continuing on the relevant Settlement Day the relevant fallback will apply (the primary fallback being the delivery of the defaulted Benchmark Obligation). In circumstances where a Departing State has left the Euro, issuers of debt in the Departing State may be subject to liquidity and solvency pressures resulting in default on obligations.

- *General and Specific Non-Transferability*: there has been growing international acceptance of capital and exchange controls as a tool to assist countries with large sovereign debts that require international financial support. These controls have targeted the transfer of currency between accounts of both resident and non-residents. The General and Specific Non-Transferability Disruption Events would be triggered if it is impossible, either generally or in relation to a specific class of entities, to (i) transfer the Event Currency between accounts in the Event Currency Jurisdiction or (ii) repatriate the Non-Event Currency[5]. For the General and Specific Non-Transferability and Material Change in Circumstance Disruption Events, an Event Currency and Event Currency Jurisdiction are required to be specified. This is discussed in Section 2.2.

- *Governmental Authority Default*: this Disruption Event is similar to the Benchmark Obligation Default but relates to government issued debt obligations/guarantees and will be triggered if there is a failure to pay/deliver or a moratorium, restructuring, or rescheduling of the debt. Again this might be attractive to a party that was looking to hedge the currency risk on Government debt of the Departing State.

- *Material Change in Circumstance*: this is a very wide Disruption Event and will apply if an event occurs in the Event Currency Jurisdiction beyond the control of the parties which makes it impossible for a party to perform its obligations under the Transaction, or generally to perform obligations similar to those under the Transaction. This event only applies if no other Disruption Events applies. The fallbacks specified in for this event are firstly, negotiation between the parties to agree on an alternative Settlement Rate and secondly No Fault Termination.

- *Nationalisation*: This Disruption Event will occur if a party's local assets are confiscated by a Government Authority. The specified fallbacks in the FX Definitions are Settlement Postponement and

[5] Interestingly, this event does not cover any prohibitions on the transfer of the Event Currency out of the local jurisdiction (the User's Guide to the FX Definitions states this is because "such action is currently prohibited in many emerging market jurisdictions").

Assignment of Claims (the assignment by the nationalised party of its claim against the Government Authority (to the extent permitted)).

2.2 Event Currency and Event Jurisdiction

2.2.1 *Summary*

- Certain Disruption Events require the definitions of Event Currency and Event Jurisdiction to apply; market participants might like to consider how these should be interpreted if there was a market desire to apply Disruption Events to EUR/[FX] Transactions (other than Price Source Disruption).
- The concepts of Event Currency and Event Jurisdiction do not work well with a currency that is used in multiple jurisdictions, such as the Euro.
- To the extent members might consider incorporating Disruption Events in EUR/[FX] swaps going forward, amendments to these provisions may be necessary.

2.2.2 Issues relating to Event Currency and Event Jurisdiction

It has already been noted that it may not be current market EUR/[FX] practice to incorporate Disruption Events in EUR/[FX] Transactions. However, in considering the potential future role of Disruption Events in such transactions, it is worth noting that for certain Disruption Events (General Inconvertibility, General Non-Transferability, Material Change in Circumstance, General Inconvertibility, General Non-Transferability, Nationalization) an Event Currency is required to be designated in the relevant Confirmation.

EVENT CURRENCY

*"**Event Currency**" means, (i) in respect of a Deliverable Transaction, the currency specified as such in the related Confirmation and (ii) in respect of a Non-Deliverable Transaction, the currency specified as such in the related Confirmation or, if such a currency is not specified, the Reference Currency.*

*"**Event Currency Jurisdiction**" means, in respect of a Transaction, the country for which the Event Currency is the lawful currency.*

Section 5.4 of the FX Definitions

The Event Currency is not required to be specified in relation to Non-Deliverable Transactions as the Event Currency is presumed to be the Reference Currency.

The Event Currency is used to define the jurisdiction in respect of which the parties have concerns about certain currency events. The Event Currency Jurisdiction is defined as the country for which the Event Currency is the lawful currency (Section 5.4(f)). However, the Euro is the lawful currency for many countries. Accordingly, the term Event Currency Jurisdiction does not work well for the Euro – events may occur in one country that has the Euro as its lawful currency but not occur in other countries. In the context of an exit from the Eurozone, there is a further complication that the Euro will no longer be the lawful currency of the Departing State. So, if for example, the parties were looking to manage the risk of, say, Greece, following a Eurozone exit, imposing exchange controls that prevent Euros being transferred out of Greek bank accounts (assuming that Euro had been specified as the Event Currency), not only would the definition of Event Currency Jurisdiction cover all member states, it would not cover Greece as the Euro would no longer be the lawful currency of Greece.

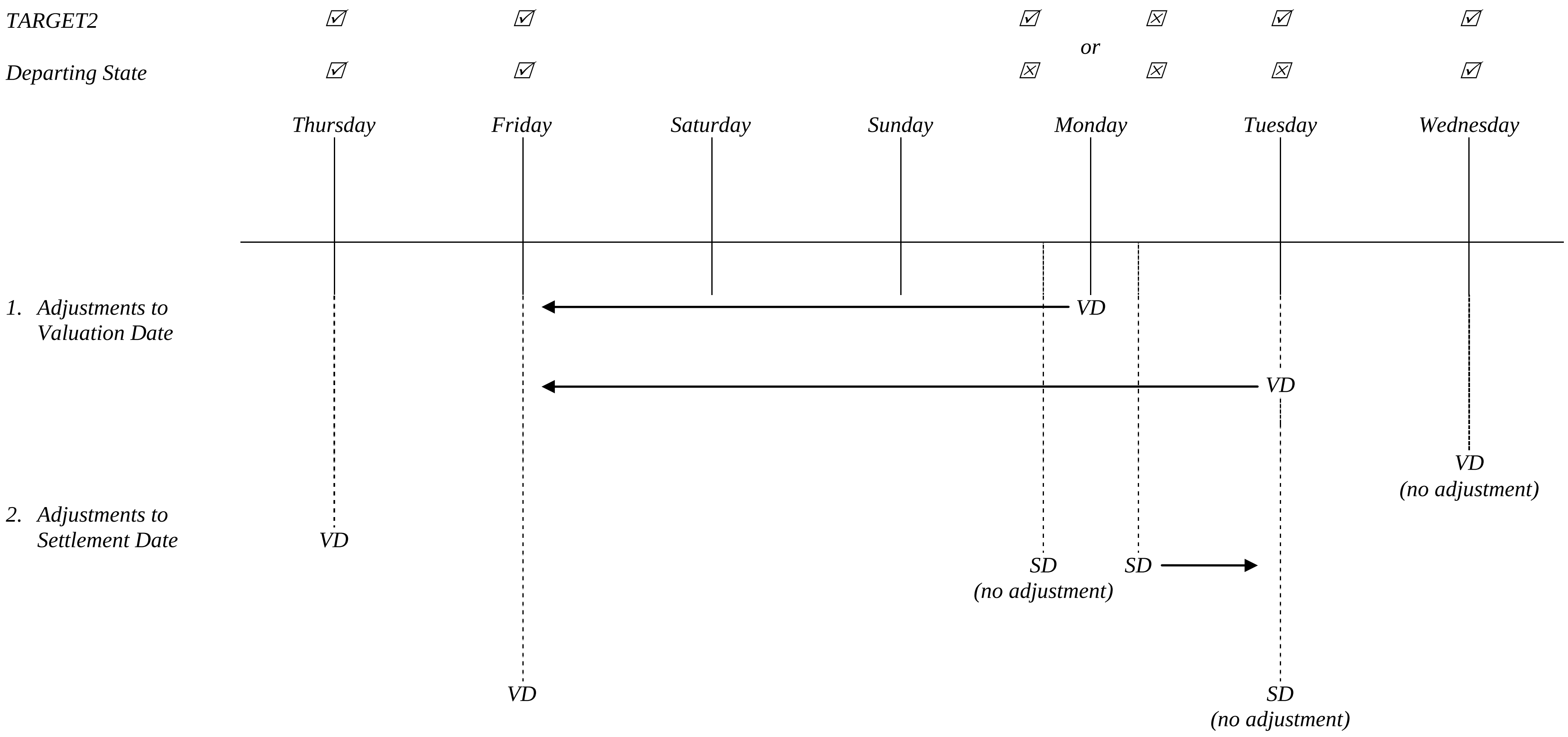
If any Disruption Events have been specified for a EUR/[FX] Transaction and the Euro has been specified as the Event Currency, it might be possible to consider the other terms of the transaction to deduce the parties' intention as to the Event Currency Jurisdiction (eg it may be apparent from the transaction that the jurisdiction of the party that is required to deliver Euros under the Transaction should be the Event Currency Jurisdiction). However, this will be a matter of interpretation.

To the extent market participants would like to introduce Disruption Events to EUR/[FX] Transactions, amendments to the FX Definitions may be necessary to ensure it is clear which jurisdiction the parties are considering when determining whether certain Disruption Events have occurred.

APPENDIX

Valuation Dates and Settlement Dates[6]

Business Days



[6] On the basis of a EUR/[EX] swap with no Disruption Events being applicable.