

ISDA[®]

International Swaps and Derivatives Association, Inc.

ISDA 2009 EUROPEAN CANCELLABLE FORM LOAN CDS PROTOCOL

published on 15 May, 2009
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (**ISDA**) has published this ISDA 2009 European Cancellable Form Loan CDS Protocol (this **Protocol**) to enable parties to Covered Transactions to amend the terms of such Covered Transactions.

Accordingly, a party that has entered into a Covered Transaction may adhere to this Protocol and be bound by its terms by completing and delivering a letter substantially in the form of Exhibit 1 to this Protocol (an **Adherence Letter**) to ISDA, as agent, as described below.

1. Amendments

- (a) By adhering to this Protocol in the manner set forth in paragraph 2 below, a party (an **Adhering Party**) that wishes to amend the terms of a Covered Transaction, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, agrees that the terms of each Covered Transaction, if any, between it and each other Adhering Party will be amended in accordance with the terms of the applicable Schedules to this Protocol.
- (b) The amendments provided for in this Protocol are set forth in Schedules 1 and 2, and each Adhering Party should specify in its Adherence Letter that one or both of these Schedules are applicable.
- (c) In respect of any Covered Transaction between two Adhering Parties, where at least one Adhering Party has specified that only one of the Schedules is applicable, only those amendments contained in such Schedule that both Adhering Parties have specified as applicable will be applicable.

2. Adherence and Effectiveness

- (a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with paragraph 4(e) below, to ISDA, as agent, of an Adherence Letter on or before 22 May 2009 or such later date designated by ISDA by notice given no later than 20 May 2009 on its website at www.isda.org (or by other suitable

- means) (in either case, the **Cut-off Date**). After the Cut-off Date, ISDA will not accept any further Adherence Letters to the Protocol.
- (i) Each Adhering Party will deliver two copies of the Adherence Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory.
 - (ii) If neither of the two boxes relating to the Covered Legacy Transactions or Covered Edscha Transactions is checked, both of those two boxes shall be deemed to have been checked and to be applicable.
 - (iii) 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 the Implementation Date. Any such amendments as set out in the relevant Schedule(s) hereto will:
- (i) in the case of a Covered Legacy Transaction, apply to any such Transaction entered into on or prior to the Implementation Date between the Adhering Parties and will be effective from the Implementation Date; and
 - (ii) in the case of a Covered Edscha Transaction, apply to any such Covered Edscha Transaction entered into on or prior to 27 May, 2009 and will be effective from the later of the Trade Date of such Covered Edscha Transaction and the Implementation 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 ISDA Master Agreement and:
- (i) In adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise.
 - (ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol will be void and ISDA will inform the relevant party of such fact as soon as reasonably possible after making such determination.
- (d) The Adhering Parties acknowledge and agree that adherence to this Protocol is irrevocable.

3. Representations and Agreements

On the Implementation Date, each Adhering Party represents to each other Adhering Party with which it has or may have entered into a Covered Transaction, that:

- (a) **Status.** It is, if relevant, duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to the Governing ISDA Master Agreement, has such status;
- (b) **Powers.** It has the power to execute and deliver the Adherence Letter and to perform its obligations under the Adherence Letter, each Covered Transaction and the Governing ISDA Master Agreement, in each case as amended by the Adherence Letter and this Protocol, and has taken all necessary action to authorise such execution, delivery and performance;
- (c) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter and the Governing ISDA Master Agreement, in each case as amended by the Adherence Letter and this Protocol, have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- (e) **Obligations Binding.** Its obligations under the Adherence Letter and the Governing ISDA Master Agreement, in each case as amended by the Adherence Letter and this Protocol, constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)); and
- (f) **Credit Support.** Its adherence to this Protocol and any amendment contemplated by this Protocol will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document relating to the Governing ISDA Master Agreement.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Governing ISDA Master Agreement that:

- (a) each of the foregoing representations will be deemed to be a representation for purposes of Section 5(a)(iv) of each such Governing ISDA Master Agreement entered into prior to the Implementation Date between them; and
- (b) any Credit Support Document between the Adhering Parties that relates to a Covered Transaction will be deemed to be amended to the extent necessary such that the operation thereof is not affected by the adherence by the Adhering Parties to this Protocol and any amendments contemplated by this Protocol.

4. Miscellaneous

- (a) ***Entire Agreement; Survival.***
 - (i) This Protocol constitutes the entire agreement and understanding of the Adhering Parties with respect to its subject matter and supersedes all oral communications and prior writings (except as otherwise provided herein) with respect thereto. 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 the Schedules hereto) 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 in effect immediately prior to the Implementation Date. This Protocol will, with respect to its subject matter, survive, and any amendments deemed to be made pursuant to it will form a part of, each Covered Transaction between the Adhering Parties notwithstanding Section 9(a) (or in the case of an ISDA Master Agreement that is a 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), Section 8(a)) of the Governing ISDA Master Agreement.
- (b) ***Amendments.*** An amendment, modification or waiver in respect of the matters contemplated by this Protocol will only be effective if made in accordance with the terms of the Governing ISDA Master Agreement and then only with effect between the parties to the Governing ISDA Master Agreement (and will only be effective to amend or override the provisions contained in paragraph 1 of this Protocol and the Schedules hereto if it expressly refers in writing to this paragraph 4(b) of this Protocol and would otherwise be effective in accordance with Section 9(b) (or in the case of an ISDA Master Agreement that is a 1992 ISDA

Master Agreement (Local Currency – Single Jurisdiction), Section 8(b)) of the Governing ISDA Master Agreement in effect between the parties).

- (c) **Headings.** The headings used in this Protocol and any Adherence Letter are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Protocol or any Adherence Letter.
- (d) **Governing Law.** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Covered Transaction between them, be governed by and construed in accordance with English law and the amendments to each Covered Transaction shall be governed by and construed in accordance with the law specified to govern that Covered Transaction and otherwise in accordance with applicable choice of law doctrine.
- (e) **Notices.** Any Adherence Letter must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at elcdsprotocol3@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 sole and absolute discretion.

5. Definitions

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

References in this Protocol and the Schedules hereto to the following terms have the meaning indicated below:

Confirmation means, in relation to a Covered Transaction between two Adhering Parties, each document or other confirming evidence exchanged between the parties or otherwise effective for the purpose of confirming or evidencing the Covered Transaction (including, for the avoidance of doubt, any loan transaction supplement).

Covered Edscha Transaction means (i) each Old Cancellable European Loan CDS Transaction and each option to enter into an Old Cancellable European Loan CDS Transaction and (ii) each Old Cancellable LevX CDS Transaction and each option to

enter into an Old Cancellable LevX CDS Transaction, in each case in respect of which each of the parties is an Adhering Party and for which:

- (a) Edscha AG (**Edscha**) is a Reference Entity;
- (b) the relevant Edscha Reference Obligations and Edscha Senior Loans are the only Deliverable Obligations; and
- (c) the portion of the Credit Derivative Transaction relating to the Edscha Reference Obligations is still outstanding as of the date hereof.

Covered Transaction means each Covered Legacy Transaction and each Covered Edscha Transaction, as applicable.

Covered Legacy Transaction means (i) each Old Cancellable European Loan CDS Transaction and each option to enter into an Old Cancellable European Loan CDS Transaction and (ii) each Old Cancellable LevX CDS Transaction and each option to enter into an Old Cancellable LevX CDS Transaction, in each case in respect of which each of the parties is an Adhering Party.

Documentation means the Governing ISDA Master Agreement, Standard Terms Supplement and Confirmation (or, in the case of an Old Cancellable European Loan CDS Transaction, the General Terms Confirmation and loan transaction supplement, if applicable) relating to a Covered Transaction.

Edscha Reference Obligation means the EUR100,000,000 Facility entered into pursuant to the Mezzanine Facility Agreement dated 18 February 2005, as amended, restated and/or supplemented from time to time.

Edscha Senior Loans means each obligation that would constitute a Senior Loan (or, in the case of the General Terms Cancellable Form, the Standard Terms Cancellable Form or the LevX Cancellable Form, a Senior Obligation) pursuant to the Documentation, assuming that the Edscha Reference Obligation is specified as a Reference Obligation in the relevant Confirmation in the case of a single-name Transaction or in respect of any Component Transaction in the case of a LevX Transaction.

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

Implementation Date means, with respect to any two Adhering Parties, the date of receipt by ISDA, as agent, of an Adherence Letter from the later of the Adhering Parties to adhere.

ISDA Master Agreement means any of the following: (i) the ISDA 2002 Master Agreement; (ii) the 1992 ISDA Master Agreement (Multicurrency – Cross Border); (iii) the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction); (iv) the 1987 ISDA Interest Rate and Currency Exchange Agreement; and (v) the 1987 ISDA Interest Rate Swap Agreement.

Old Cancellable European Loan CDS Transaction means a Credit Derivative Transaction evidenced by a Confirmation that incorporates the Credit Derivative Transactions on Leveraged Loans Standard Terms Supplement published on 18 October 2006 (the **Standard Terms Cancellable Form**) or by a loan transaction supplement that incorporates the General Terms Confirmation for Credit Derivative Transactions on Leveraged Loans (the **General Terms Cancellable Form**), any amended version thereof, or any other Credit Derivative Transaction entered into on the basis of a confirmation or loan transaction supplement on substantially similar terms.

Old Cancellable LevX CDS Transaction means a Credit Derivative Transaction evidenced by a Confirmation that incorporates the iTraxx® LevX® Standard Terms Supplement published on 30 October 2006 (the **LevX Cancellable Form**), any amended version thereof, or any other Credit Derivative Transaction entered into on the basis of a confirmation on substantially similar terms.

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

EXHIBIT 1
to ISDA 2009 European Cancellable Form Loan CDS Protocol

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

International Swaps and Derivatives Association, Inc.

Send to: elcdsprotocol3@isda.org

Dear Sirs,

ISDA 2009 European Cancellable Form Loan CDS Protocol - Adherence

The purpose of this letter is to confirm our adherence to the ISDA 2009 European Cancellable Form Loan CDS Protocol as published by the International Swaps and Derivatives Association, Inc. on 15 May 2009 (the **Protocol**). This letter constitutes an Adherence Letter as referred to in the Protocol. The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter, which will supplement and form part of each Covered Transaction entered into on or prior to the Implementation Date (or in the case of a Covered Edscha Transaction, entered into on or prior to 27 May) between us and each other Adhering Party.

1. Specified Terms

Each of the following Schedules will be applicable if specified below as applicable:

Schedule	Check to confirm Adherence
Schedule 1 – Covered Legacy Transactions	
Schedule 2 – Covered Edscha Transactions	

The amendments in the relevant Schedule(s) of the Protocol shall apply to each Covered Transaction to which we are a party in accordance with the terms of the Protocol.

We acknowledge and agree that if no boxes are checked, each box will be deemed to be checked and the amendments in Schedules 1 and 2 will apply to each Covered Transaction accordingly.

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: [].]

[3][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 a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]¹

By:

¹ Specify legal name of Adhering Party. If you are an investment or asset manager and act on behalf of multiple funds, you must indicate in the signature block, "Investment/Asset Manager, acting on behalf of each of the funds and accounts listed in the relevant Master Agreement (or other agreement which deems a Master Agreement to have been created) 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 (unless such names are contained in the Adherence Letter or any attached appendix).

Name:

Title:

Signature:

SCHEDULE 1

Covered Legacy Transactions

With effect from the Implementation Date, the Documentation relating to each Covered Transaction other than a Covered Edscha Transaction (which, for the avoidance of doubt, in the case of a Covered Transaction that is an option to enter into an Old Cancellable European Loan CDS Transaction or an Old Cancellable LevX CDS Transaction, shall be the Standard Terms Supplement (or, in the case of an Old Cancellable European Loan CDS Transaction, the General Terms Confirmation if relevant) relating to that Old Cancellable European Loan CDS Transaction or Old Cancellable LevX CDS Transaction, as the case may be) shall be modified as follows:

The "Settlement Method" in the Standard Terms Supplement or General Terms Confirmation, as the case may be, shall be amended by:

(a) the addition of the following at the beginning thereof:

"(i) If:

- (a) a Market Settlement Mechanism that covers the relevant Reference Obligation is announced before the date on which the Notice of Physical Settlement is effective; and
- (b) this Transaction is included in such Market Settlement Mechanism in accordance with its terms,

then the Transaction will be settled according to the terms of such Market Settlement Mechanism.

(ii) If sub-clause (i) above does not apply to this Transaction,"

(b) the addition of the following at the end thereof:

"(iii) If sub-clause (i) applies to this Transaction but the relevant Market Settlement Mechanism does not result in the settlement of the Transaction due to the abandonment, retraction or failure of such Market Settlement Mechanism (a **Market Settlement Failure**), then:

- (a) notwithstanding Section 3.4 of the Credit Derivatives Definitions (as amended herein), any Notice of Physical Settlement delivered by Buyer prior to the Market Settlement Failure will be deemed not to have been delivered and Buyer will be permitted to deliver a Notice of Physical Settlement until the tenth Business Day after the day on which the entity authorised by the Market Settlement Mechanism announces such Market Settlement Failure; and

(b) sub-clause (ii) above shall apply in respect of this Transaction."

(c) the addition of the following definition:

"Market Mechanism:	Settlement	The Cancellable ELCDS Auction Settlement Terms published by ISDA and International Index Company Ltd. (or any successor thereto) from time to time."
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To the extent that any provision of the Credit Derivatives Definitions is inconsistent with the terms of this Schedule 1, the terms of this Schedule 1 shall govern.

SCHEDULE 2

Covered Edscha Transactions

With effect from the later of the Implementation Date and the Trade Date of the Covered Edscha Transaction, the Documentation relating to each Covered Edscha Transaction (which, for the avoidance of doubt, in the case of a Covered Edscha Transaction that is an option to enter into an Old Cancellable European Loan CDS Transaction or an Old Cancellable LevX CDS Transaction, shall be the Standard Terms Supplement (or, in the case of an Old Cancellable European Loans CDS Transaction, the General Terms Confirmation if relevant) relating to that Old Cancellable European Loan CDS Transaction or Old Cancellable LevX CDS Transaction, as the case may be) shall be modified as follows:

The "Settlement Method" in the Standard Terms Supplement or General Terms Confirmation, as the case may be, shall be amended by:

(a) the addition of the following at the beginning thereof:

"(i) If:

- (a) a Market Settlement Mechanism that covers the relevant Reference Obligation is announced before the date on which the Notice of Physical Settlement is effective; and
- (b) this Transaction is included in such Market Settlement Mechanism in accordance with its terms,

then the Transaction will be settled according to the terms of such Market Settlement Mechanism.

(ii) If sub-clause (i) above does not apply to this Transaction,"

(b) the addition of the following at the end thereof:

"(iii) If sub-clause (i) applies to this Transaction but the relevant Market Settlement Mechanism does not result in the settlement of the Transaction due to the abandonment, retraction or failure of such Market Settlement Mechanism (a **Market Settlement Failure**), then:

- (a) notwithstanding Section 3.4 of the Credit Derivatives Definitions (as amended herein), any Notice of Physical Settlement delivered by Buyer prior to the Market Settlement Failure will be deemed not to have been delivered and Buyer will be permitted to deliver a Notice of Physical Settlement until the tenth Business Day after the day on which the entity authorised by the Market Settlement Mechanism announces such Market Settlement Failure; and

(b) sub-clause (ii) above shall apply in respect of this Transaction."

(c) the addition of the following definition:

"Market Mechanism:	Settlement	The Cancellable ELCDS Auction Settlement Terms published by ISDA and International Index Company Ltd. (or any successor thereto) on or before 15 May 2009 in respect of Credit Derivative Transactions referencing certain loan obligations of Edscha AG.
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To the extent that any provision of the Credit Derivatives Definitions is inconsistent with the terms of this Schedule 2, the terms of this Schedule 2 shall govern.