

Additional Provisions for Physically Settled Default Swaps – Monoline Insurer as Reference Entity

⁺(published on January 21, 2005)
(the “2005 Monoline Supplement”)

Additional Provisions

- (a) **Qualifying Policy.** “Qualifying Policy” means a financial guaranty insurance policy or similar financial guarantee pursuant to which a Reference Entity irrevocably guarantees or insures all Instrument Payments (as defined below) of an instrument that constitutes Borrowed Money (modified as set forth below) (the “Insured Instrument”) for which another party (including a special purpose entity or trust) is the obligor (the “Insured Obligor”). Qualifying Policies shall exclude any arrangement (i) structured as a surety bond, letter of credit or equivalent legal arrangement or (ii) pursuant to the express contractual terms of which the payment obligations of the Reference Entity can be discharged or reduced as a result of the occurrence or non-occurrence of an event or circumstance (other than the payment of Instrument Payments). The benefit of a Qualifying Policy must be capable of being Delivered together with the Delivery of the Insured Instrument.

“Instrument Payments” means (A) in the case of any Insured Instrument that is in the form of a pass-through certificate or similar funded beneficial interest, (x) the specified periodic distributions in respect of interest or other return on the Certificate Balance on or prior to the ultimate distribution of the Certificate Balance and (y) the ultimate distribution of the Certificate Balance on or prior to a specified date and (B) in the case of any other Insured Instrument, the scheduled payments of principal and interest, in the case of both (A) and (B) (1) determined without regard to limited recourse or reduction provisions of the type described in paragraph (d) below and (2) excluding sums in respect of default interest,

⁺ ~~The “Additional Provisions for Physically Settled Default Swaps – Monoline Insurer as Reference Entity”, published on January 21, 2005, (the “2005 Monoline Supplement”) may be added to a credit default swap confirmation as a new paragraph to the relevant confirmation (immediately following “Settlement Terms”). Alternatively, the Additional Provisions may be incorporated into a relevant confirmation (including in electronic form) by wording in the document indicating that the 2005 Monoline Supplement, published on January 21, 2005, is incorporated by reference therein.~~

~~The Additional Provisions are intended for physically settled credit default swap transactions where (i) the Reference Entity is a monoline insurance company issuing financial guaranty insurance policies or similar financial guarantees, (ii) Borrowed Money (or a subset), as modified by the Additional Provisions, is selected as the Obligation Category, (iii) Bond or Loan (or a subset), as modified by the Additional Provisions, is selected as the Deliverable Obligation Category, and (iv) the Credit Events are Failure to Pay and Bankruptcy and, if the parties so agree, Restructuring.~~

indemnities, tax gross-ups, make-whole amounts, early redemption premiums and other similar amounts (whether or not guaranteed or insured by the Qualifying Policy).

“Certificate Balance” means, in the case of an Insured Instrument that is in the form of a pass-through certificate or similar funded beneficial interest, the unit principal balance, certificate balance or similar measure of unreimbursed principal investment.

- (b) **Obligation and Deliverable Obligation.** Sections ~~2.14(a) and 2.15(a)~~3.1(a) (Obligation) and 3.2(a) (Deliverable Obligation) are hereby amended by adding “or Qualifying Policy” after “or as provider of a ~~Qualifying Affiliate~~Relevant Guarantee”.
- (c) **Interpretation of Provisions.** In the event that an Obligation or a Deliverable Obligation is a Qualifying Policy, the terms of Section ~~2.21(d)~~3.15(d) (Interpretation of Provisions) will apply, with references to the ~~Qualifying Affiliate~~Relevant Guarantee, the Underlying Obligation and the Underlying Obligor deemed to include the Qualifying Policy, the Insured Instrument and the Insured Obligor, respectively, except that:
 - (i) the Obligation Category Borrowed Money and the Obligation Category and Deliverable Obligation Category Bond shall be deemed to include distributions payable under an Insured Instrument in the form of a pass-through certificate or similar funded beneficial interest, the Deliverable Obligation Category Bond shall be deemed to include such an Insured Instrument, and the terms “obligation” and “obligor” as used in the 2003~~14~~14 ISDA~~®~~ Credit Derivatives Definitions in respect of such an Insured Instrument shall be construed accordingly;
 - (ii) references in the definitions of Assignable Loan and Consent Required Loan to the guarantor and guaranteeing shall be deemed to include the insurer and insuring, respectively;
 - (iii) neither the Qualifying Policy nor the Insured Instrument must satisfy on the relevant date the Deliverable Obligation Characteristic of Accelerated or Matured, whether or not that characteristic is otherwise specified as applicable in this Confirmation;
 - (iv) if the Assignable Loan, Consent Required Loan, Direct Loan Participation or Transferable Deliverable Obligation Characteristics are specified in this Confirmation and if the benefit of the Qualifying Policy is not transferred as part of any transfer of the Insured Instrument, the Qualifying Policy must be transferable at least to the same extent as the Insured Instrument;
 - (v) with respect to an Insured Instrument in the form of a pass-through certificate or similar funded beneficial interest, the term ~~“outstanding principal balance” shall mean the outstanding Certificate Balance and~~ “maturity”, as such term is used in

the Maximum Maturity Deliverable Obligation Characteristic, shall mean the specified date by which the Qualifying Policy guarantees or insures, as applicable, that the ultimate distribution of the Certificate Balance will occur;~~and~~

~~(vi) For the avoidance of doubt, the amendments to Section 2.21(d) provided in the May 2003 Supplement to the 2003 ISDA Credit Derivatives Definitions shall not be construed to apply to Qualifying Policies and Insured Instruments.~~

(vi) with respect to a Qualifying Policy and an Insured Instrument, only the Qualifying Policy must satisfy on the relevant date or dates the “Not Subordinated” Obligation Characteristic or Deliverable Obligation Characteristic, if applicable.

~~(d) Not Contingent. An Insured Instrument will not be regarded as failing to satisfy the Not Contingent Deliverable Obligation Characteristic solely because such Insured Instrument is subject to~~ (d) Outstanding Principal Balance. References in Section 3.8(a)(i) (Outstanding Principal Balance) to a Guarantee, the Underlying Obligation and the Underlying Obligor shall be deemed to include a Qualifying Policy, the Insured Instrument and the Insured Obligor respectively. Any provisions of an Insured Instrument limiting recourse in respect of such Insured Instrument to the proceeds of specified assets (including proceeds subject to a priority of payments) or reducing the amount of any Instrument Payments owing under such Insured Instrument, shall be disregarded for the purposes of Section 3.8(a)(ii)(B) (Outstanding Principal Balance) provided that such provisions are not applicable to the Qualifying Policy by the terms thereof and the Qualifying Policy continues to guarantee or insure, as applicable, the Instrument Payments that would have been required to be made absent any such limitation or reduction.²¹

(e) **Deliver.** For purposes of Section ~~8.28.12~~ (Deliver), “Deliver” with respect to an obligation that is a Qualifying Policy means to Deliver both the Insured Instrument and the benefit of the Qualifying Policy (or a custodial receipt issued by an internationally recognized custodian representing an interest in such an Insured Instrument and the related Qualifying Policy), and “Delivery” and “Delivered” will be construed accordingly.

(f) **Provisions for Determining a Successor.** ~~Section 2.2(e)~~ Sub-sections (a), (d) and (h) of Section 2.2 (Provisions for Determining a Successor) are hereby amended by adding “or Qualifying Policy” after each occurrence of “a Relevant Guarantee”. Section 2.2(h) (Provisions for Determining a Successor) is hereby amended by adding “or insurer provider of a Qualifying Policy” after “or as guarantor or guarantors”.

²¹ By incorporating this provision in a document, no inference should be made as to the interpretation of ~~the~~ “Not Contingent Outstanding Principal Balance” Deliverable Obligation Characteristic in the context of limited recourse or similar terms applicable to Deliverable Obligations other than Qualifying Policies.

- (g) **Original Non-Standard Reference Obligation, Substitute Reference Obligation and Substitution Event.** ~~Section 2.30 is~~ Sections 2.8 (Original Non-Standard Reference Obligation), 2.10(c)(i) (*Substitute Reference Obligation*) and 2.11(a)(iii) (*Substitution Event*) are hereby amended by adding “or Qualifying Policy” after “~~or as provider of a Qualifying Affiliate Guarantee~~” in the definition of Substitute Reference Obligation and paragraph (b) thereof. ~~For purposes of Section 2.30(a)(ii)(B) and Section 1.14(b)(ii), references to the Qualifying Guarantee and the Underlying Obligation shall be deemed to include the Qualifying Policy and the Insured Instrument, respectively.~~ a guarantee”.
- (h) **Restructuring.**
- (i) With respect to an Insured Instrument that is in the form of a pass-through certificate or similar funded beneficial interest or a Qualifying Policy with respect thereto, Section 4.7(a)(i) to (v) (Restructuring) is hereby amended to read as follows:
- (i) a reduction in the rate or amount of the Instrument Payments described in clause (A)(x) of the definition thereof that are guaranteed or insured by the Qualifying Policy (including by way of redenomination);
 - (ii) a reduction in the amount of the Instrument Payments described in clause (A)(y) of the definition thereof that are guaranteed or insured by the Qualifying Policy ~~;~~ (including by way of redenomination);
 - (iii) a postponement or other deferral of a date or dates for either (A) the payment or accrual of the Instrument Payments described in clause (A)(x) of the definition thereof or (B) the payment of the Instrument Payments described in clause (A)(y) of the definition thereof, in each case that are guaranteed or insured by the Qualifying Policy;
 - (iv) a change in the ranking in priority of payment of (A) any Obligation under a Qualifying Policy in respect of Instrument Payments, causing the Subordination of such Obligation to any other Obligation or (B) any Instrument Payments, causing the Subordination of such Insured Instrument to any other instrument in the form of a pass-through certificate or similar funded beneficial interest issued by the Insured Obligor, it being understood that, for this purpose, Subordination will be deemed to include any such change that results in a lower ranking under a priority of payments provision applicable to the relevant Instrument Payments; or
 - (v) any change in the currency ~~or composition~~ of any payment of Instrument Payments that are guaranteed or insured by the Qualifying Policy to any currency ~~which is not a Permitted Currency~~ other than the

lawful currency of Canada, Japan, Switzerland, the United Kingdom, the United States of America and the euro and any successor currency to any of the aforementioned currencies (which in the case of the euro, shall mean the currency which succeeds to and replaces the euro in whole).

- (ii) Section ~~4.7(b)~~4.7(b)(iv) (Restructuring) is hereby amended by adding “or, in the case of Qualifying Policy and an Insured Instrument, where (A) the Qualifying Policy continues to guarantee or insure, as applicable, that the same Instrument Payments will be made on the same dates on which the Qualifying Policy guaranteed or insured that such Instrument Payments would be made prior to such event and (B) such event is not a change in the ranking in the priority of payment of the Qualifying Policy” ~~after “Reference Entity”~~at the end thereof.

- (iii) Section 4.7 (Restructuring) is hereby amended by the insertion of clause (~~d~~e) as follows:

For purposes of Sections 4.7(a), 4.7(b) and ~~4.9~~4.10 (Multiple Holder Obligation), the term Obligation shall be deemed to include Insured Instruments for which the Reference Entity is acting as provider of a Qualifying Policy. In the case of a Qualifying Policy and an Insured Instrument, references to the Reference Entity in Section 4.7(a) shall be deemed to refer to the Insured Obligor and the reference to the Reference Entity in Section 4.7(b) shall continue to refer to the Reference Entity.

- (i) **Fully Transferable Obligation and Conditionally Transferable Obligation.** In the event that a Fully Transferable Obligation or Conditionally Transferable Obligation is a Qualifying Policy, the Insured Instrument must meet the requirements of the relevant definition and, if the benefit of the Qualifying Policy is not transferred as part of any transfer of the Insured Instrument, the Qualifying Policy must be transferable at least to the same extent as the Insured Instrument. References in the definition of Conditionally Transferable Obligation to the guarantor and guaranteeing shall be deemed to include the insurer and insuring, respectively. With respect to an Insured Instrument in the form of a pass-through certificate or similar funded beneficial interest, the term “final maturity date”, as such term is used in Sections ~~2.32(a)~~3.31(a) (Mod R) and ~~2.33(a)~~3.32(a) (Mod Mod R) and the definition of Restructuring Maturity Limitation Date, shall mean the specified date by which the Qualifying Policy guarantees or insures, as applicable, that the ultimate distribution of the Certificate Balance will occur.
- (j) **Other Provisions.** For purposes of Sections ~~2.15(a)(ii), 4.1, 8.2, 9.1 and 9.2(a) as well as Section 3(a)(iv) of the Novation Agreement,~~ 3.10 (Prohibited Action), 4.1 (Credit Event), 8.12 (Deliver), 11.1 (Additional Representations and Agreements of the Parties) and 11.2(a) (Additional Representations and Agreements for Physical Settlement) references to the Underlying Obligation and the Underlying Obligor shall be deemed to include

Insured Instruments and the Insured Obligor, respectively. Any transfer or similar fee reasonably incurred by Buyer in connection with the Delivery of a Qualifying Policy and payable to the Reference Entity shall be payable by Buyer and Seller equally on the Delivery Date or Latest Permissible Physical Settlement Date, as applicable.

Comparison Details	
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Sources	
Original Document	[#19898770] [v2] Additional Provisions for Monoline Reference Entities
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Comparison Statistics	
Insertions	12
Deletions	13
Changes	22
Moves	2
TOTAL CHANGES	49

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Deletions	
<u>Moves</u> / Moves	
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Changed lines	Mark left border.
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