



CDIC
Canada Deposit
Insurance Corporation

SADC
Société d'assurance-dépôts
du Canada

Guy L. Saint-Pierre

President and Chief Executive Officer
Président et chef de la direction

March 27, 2009

By Email to francois.bourassa@tres.bnc.ca

Mr. Francois Bourassa
Chair of the ISDA Canadian Steering Committee
International Swaps and Derivatives Association, Inc.
360 Madison Avenue, 16th Floor
New York, NY 10017
United States of America

Dear Mr. Bourassa:

Re: The Budget Act 2009 – Amendments to the *Canada Deposit Insurance Corporation Act*

This is further to your letter dated March 20, 2009, wherein you have expressed certain concerns regarding amendments to the *Canada Deposit Insurance Corporation Act* (the CDIC Act) that were introduced in the *Budget Implementation Act, 2009* (the Budget Act). As you know, the Budget Act received Royal Assent on March 12, 2009, and the relevant amendments to the CDIC Act will come into force upon proclamation by the Governor in Council.

Under the CDIC Act, certain steps or actions are subject to stays where an order is made in respect of a federal member institution (a FMI) under the financial institutions restructuring provisions of the CDIC Act (a FIRP order). However, the termination of eligible financial contracts (EFCs) to which a FMI is a party, netting in accordance with terminated EFCs and realization of financial collateral held by counterparties of a FMI in relation to EFCs are expressly beyond the reach of these stays.

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Canada 

Cherry-Picking

The Budget Act adds some new provisions to the CDIC Act, including a provision that would enable CDIC, if appointed by a FIRP order as receiver of a FMI with the aim of establishing a bridge member institution (a BMI), to undertake to have an EFC to which the FMI is a party assumed by the BMI. ISDA has expressed a concern that, in such an event, and if the FMI was a party to more than one EFC with the same counterparty, this new provision might permit CDIC as receiver to arrange to have the BMI selectively assume some but not all of the EFCs outstanding between the FMI and that counterparty (i.e., to “cherry-pick”).

In our view, the new provision does not enable CDIC to “cherry-pick”. In any event, CDIC intends, if appointed by a FIRP order as receiver of a FMI with the aim of establishing a BMI, to only arrange for the assumption by the BMI of all or none of the EFCs outstanding between the FMI and the same counterparty.

We are advised that the Department of Finance will be proposing amendments to the EFC regulations with a view to clarifying this matter and eliminating any concern that selective assumption might be permissible.

Exempting Order/Regulations

Second, ISDA has expressed a concern that the new provisions which would allow the Governor in Council, by order or by regulation, to exempt a BMI or an FMI that is the subject of a FIRP order from the application of such sections of the CDIC Act or the *Winding-up and Restructuring Act* (the WURA), as the Governor in Council may specify, might be used to remove the protection against being stayed that is afforded to EFC counterparties.

CDIC has no authority over the making of any order or regulation under these provisions. However, CDIC does not intend, if appointed by a FIRP order as receiver of a FMI with the aim of establishing a BMI, to request or recommend the making of an order or regulation that would remove the protection afforded to EFC counterparties against being stayed.

Timeliness of Exercising Remedies

Finally, ISDA has expressed a concern that, because the new provisions do not stipulate a time period within which CDIC, as receiver, would have to declare whether it would arrange to have an EFC assumed by the BMI, it might be possible for CDIC, as receiver, to do that after the EFC has been terminated by the counterparty.

In our view, the new provision does not allow for that possibility. Unless and until CDIC, as receiver, declared that it would arrange to have an EFC assumed by the BMI, no stay would exist to prevent termination. A terminated EFC could not be revived by a subsequent declaration.

In the United States, the Federal Deposit Insurance Corporation is afforded an automatic stay, to the end of the next business day following its appointment as receiver, to say whether an EFC will be assumed. In contrast, under the CDIC Act a declaration regarding assumption of an EFC by a BMI must be made before the counterparty terminates the EFC, which, in CDIC's view, it is free to do at will if no declaration has been made. Consequently, CDIC, if appointed by a FIRP order as receiver of a FMI with the aim of establishing a BMI, would have to declare almost immediately that it has decided to arrange for an EFC to be assumed by a BMI.

We trust this addresses your concerns.

Yours very truly,



Guy L. Saint-Pierre
President and Chief Executive Officer

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