

*These FAQs are provided for general guidance only and should not be relied upon as advice. Parties acknowledge that ISDA does not provide legal or other advice and expressly disclaims any responsibility for the contents hereof. Each party should undertake a thorough review of its documentation (i.e., not limited to the ISDA Master but including, e.g., all Credit Support Documents and Confirmations) with the relevant Lehman entities and obtain such legal or other professional advice as appropriate.*

## **FAQS: Lehman Brothers Close-Out**

### **1. What procedures apply when a market participant is facing a Lehman group entity as counterparty on an OTC derivative trade, whatever the underlying asset class (e.g., interest rate swap or credit derivatives)?**

Participants should refer to the Master Agreements and Credit Support (collateral) documentation that they have in place covering OTC derivative transactions with one or more Lehman group entities and take advice from legal counsel as appropriate. Where participants determine that an Event of Default has occurred with respect to their counterparty (or, depending on the terms of their agreements, other group entities), the terms of this documentation will allow participants to (i) close out contracts; (ii) determine the net amount owing between them; and (iii) take into account any collateral that may have been posted. Parties are expected to determine when and how to put these provisions into practice, working with their legal counsel as appropriate.

### **2. What are the steps that must be taken in order to effect an early termination for breach of Section 5(a)(vii)(4)?**

Assuming that Automatic Early Termination has not been elected, so long as the Event of Default is then continuing, a notice may be given specifying the relevant Event of Default and designating an Early Termination Date in respect of all outstanding Transactions. The Early Termination Date cannot be earlier than the date that the notice is effective and cannot be later than 20 days from such date. ISDA does not produce a standard form for such a notice.

If Automatic Early Termination has been elected, an Early Termination Date in respect of all outstanding Transactions will be deemed to have occurred as of the time immediately preceding the institution of the relevant proceeding, i.e., the filing of the Voluntary Petition by LBHI.

The manner in which the close-out amount is determined will depend upon whether Close-Out Amount, Market Quotation, or Loss is applicable.

On or as soon as reasonably practicable following the occurrence of the Early Termination Date, provide a statement of account showing in reasonable detail the calculations leading to the Early Termination Amount (including quotations obtained, and in the case of the 2002 ISDA Master, market data or information from internal sources used in the calculations). In addition, give details of the relevant account to which amounts are to be paid.

**3. Do I have to do anything if I have no outstanding Transactions?**

No. Firms that have no outstanding Transactions do not need to do anything. The ISDA Master does not have any mechanism for termination of the ISDA Master, but only for termination of outstanding Transactions.

**4. What procedures apply when a Lehman group entity is the subject of a credit or equity derivative trade, i.e., it is the Reference Entity?**

A decision has been made to hold an auction with respect to covered credit derivative transactions that reference LBHI. ISDA will perform its usual role in relation to such auction. The process will follow the usual timeline, involving market participants in all the stages that normally apply in effecting a protocol.

With regard to equity derivative transactions referencing LBHI, the filing would constitute an Insolvency Filing under the 2002 ISDA Equity Derivative Definitions. Participants should be aware of other requirements for an Insolvency Filing under the 2007 Americas Master Variance Swap Confirmation Agreement.

**5. Is there any ISDA specific language in regard to the treatment of Prime Brokered transactions?**

No, any terms that are specific to prime brokered transactions would be governed by the terms of Prime Brokerage or Give-Up agreements.

**6. When determining the amount due when closing out positions with Lehman Brothers under the 1992 ISDA Master Agreement with Market Quotation specified, how should market participants proceed when obtaining quotations is impracticable?**

To the extent that a Non-defaulting Party has determined that it is unable to determine Market Quotations, or reasonably believe that such Market Quotations will not produce a commercially reasonable result, as provided under the 1992 Master Agreement, Loss may be used. Firms must make their own determination as to when such conditions are met.