

**User's Guide
to the**

**Standard
Form
Agreements**

1987 Edition

ISDA[®]

INTERNATIONAL SWAP DEALERS ASSOCIATION, INC.

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I. INTRODUCTION

This Guide describes how the standard form agreements published by the International Swap Dealers Association, Inc. (“ISDA”) can be used by participants in the swap market to document interest rate swaps, currency exchanges and cross-currency interest rate swaps. There are two forms, entitled “Interest Rate Swap Agreement” and “Interest Rate and Currency Exchange Agreement”, which differ principally in the types of transactions to which each is suited. The forms are complete contracts which are designed to reflect general market practice and, it is believed, provide a fair basis on which participants in the market may enter into swap transactions.

Publication of these forms represents a major step forward in the efforts that began in late 1983 to standardize and simplify swap documentation. These efforts, prompted by the rapid growth and development of the swap market, began with the publication in the fall of 1985 of the Code of Standard Wording, Assumptions and Provisions for Swaps (the “Code”) and continued with the publication of the 1986 Edition of the Code, which expanded the coverage of the Code to include subjects not dealt with in the 1985 Edition. The standard form agreements represent the next step in that process.

The forms were developed during the second half of 1986 and early 1987 by working groups in New York and London of the Documentation Task Force of ISDA. These working groups consisted of representatives of many of the commercial, investment and merchant banks which are ISDA members, as well as their counsel. In addition, comments were solicited from several companies and governmental agencies worldwide which participate in the interest rate and currency swap markets. During the first half of 1987, the Documentation Task Force developed the 1987 Interest Rate and Currency Exchange Definitions (the “Currency Definitions”) for use in conjunction with the Interest Rate and Currency Exchange Agreement.

It is hoped that the use of these forms will allow swap participants to simplify and accelerate the process of documenting swaps. In particular, use of the forms should significantly reduce time spent reviewing and negotiating mechanical provisions and enable the parties to concentrate on business terms. In addition, the forms are designed to allow users to modify any provisions as they think necessary, as described below. Copies of the forms, the Code and the Currency Definitions may be obtained from ISDA (telephone (212) 972-3088).

Part II of this Guide gives an overview of how to use the forms. For those who want a more detailed explanation of the forms, Part III contains a section-by-section guide to the provisions.

A Note on Copyright

ISDA consents to and encourages the use and photocopying of these forms for the preparation of swap agreements. ISDA does not, however, consent to the reproduction of either form for purposes of public distribution or sale.

II. THE FORMS—An Overview

A. Description of the Forms

Both of the forms are master agreements which can govern multiple swap transactions. The economic terms of each swap transaction are documented in a separate confirmation (a “Confirmation”) which constitutes a supplement to the agreement. In the case of each form, the basic text and all the Confirmations form one agreement. The two forms are described below:

1. ***The Code-based Form.*** The “Interest Rate Swap Agreement” is an agreement for U.S. dollar-denominated interest rate swaps. It incorporates by reference the 1986 Edition of the Code with certain modifications and is intended to be used with the Code. (All references hereinafter to the Code are to the 1986 Edition of the Code.) It is governed by the law of the State of New York. It is referred to in this Guide as the “Code-based form”.
2. ***The Multi-currency Form.*** The “Interest Rate and Currency Exchange Agreement” is an agreement for interest rate swaps in any currency as well as currency swaps and cross-currency interest rate swaps. It does not incorporate the Code by reference but contains provisions virtually identical to the Code provisions contained in the Code-based form, except that the form does not include provisions comparable to Articles 2 through 8 of the Code, which set forth how fixed and floating amounts are calculated and provide definitions of various floating rate options. Instead, Confirmations under the Multi-currency form incorporate the Currency Definitions, which set forth provisions comparable to those Articles of the Code. This form of agreement can be governed by New York law or English law at the election of the parties. It is referred to in this Guide as the “Multi-currency form”.

There are no substantive differences in the two forms, other than minor ones necessitated by the multi-currency aspects of the Multi-currency form and differences in the jurisdiction and governing law sections. These differences are noted in Part III of this Guide.

The choice as to which form to use is likely to depend primarily on the type of transactions the parties expect to enter into, because most of the differences between the forms are related to the type of transaction.

Parties who wish to continue to use and develop their own forms are free to borrow from or adapt the ISDA forms as they wish.

B. How to Use the Forms

The forms are structured as complete contracts. Each contains payment provisions, representations, agreements, events of default, provisions for early termination, cross-border provisions and other provisions typically found in swap contracts.

To use the forms, users need only fill in identifying information in the main text and complete the schedule (the “Schedule”) attached to each form. Users may also note on the Schedule whether certain optional provisions in the forms will apply. The items that must be addressed by users and the optional provisions are highlighted in part III of this Guide. Users may also alter or amend the provisions of the forms as they wish. Amendments can be made by specifying additional or alternative provisions in the Schedule. Deletions can be made either by a statement in the Schedule or by crossing out a provision in the main text.

Users of the forms should employ the printed version and should not retype the main text of each form (see the note on copyright in Section I of this Guide). This guarantees to each party that the language corresponds to the standard forms and thereby reduces the time and expense involved in reviewing documentation prepared by another party. Such benefits are dramatically lessened if the forms are retyped. It is advantageous to use the printed forms even if users wish to make additions or deletions, for this enables them to focus on the necessary changes.

The Schedules are designed to be filled out as printed or retyped as users may choose. It may be more practical to retype the Schedule where significant additions are made.

The Code-based form includes an Exhibit setting forth a form of telex and/or letter agreement which may be used as a Confirmation for individual swap transactions under that form. The Currency Definitions include an Exhibit setting forth a form of telex and/or letter agreement which may be used as a Confirmation for individual swap transactions under the Multi-currency form. The actual telexes or letter agreements used to confirm particular swaps would be prepared by the parties by following the appropriate form, with such changes as are appropriate.

III. USING THE FORMS—A Section-by-Section Guide

The following is a section-by-section guide to using the forms. It highlights the items which the parties must specify in the Schedule and those which must be completed in the main text. It also explains certain provisions, including the optional provisions included in the forms, and explains, in a few instances, certain alternatives to provisions included in the forms. Unless otherwise noted, comments apply to both forms and references to a particular section are references to that section in each form.

A. Organization of the Forms

To the extent possible, the order of provisions and the enumeration of sections are the same in the two forms. Certain tax provisions are consolidated in Section 12 of the Code-based form because it is expected that this form will be frequently used in transactions involving two United States parties where withholding tax issues will not be of concern. The comparable provisions are included in appropriate sections throughout the Multi-currency form (see for example the Payments, Representations and Agreements sections). Certain other differences in the texts and in enumeration of sections result from the incorporation by reference of the Code in the Code-based form.

B. Identifying Information and Signatures

The name of each party and, if desired, the form and jurisdiction of its organization must be filled in on the first page of the main text as well as in the heading of the Schedule. The form must be dated on the first page and in the heading of the Schedule. The name of each party and the names and titles of signatories must be filled in on the signature page. Additional signatures may be added on that page as necessary. The main text of the agreement must be signed; the Schedule may, but need not, be signed.

C. Section 2—Payments

1. **Payments.** Most payment terms will be set forth in the individual Confirmations. (See Section III (O) of this Guide.)
2. **Bank Accounts.** Each agreement contemplates that the parties will specify accounts for payments under each swap in the individual Confirmation or in some other notice. See Section 2 (a). Of course, the parties may if they wish specify the accounts in the Schedule. The forms provide that the parties may change a specified account upon five days notice. In the Code-based form, the new account must be in the same country as the prior account (for the convenience of the other party and to minimize any possible adverse withholding tax risks). There is no such restriction in the Multi-currency form in recognition of the fact that an account in a swap involving the European Currency Unit or certain other currencies may need to be moved to a different country under certain circumstances. (See Section 2 (b). See also Section III (O) (4) of this Guide.)
3. **Netting.** Each form provides that payments due on the same date in the same currency under a given swap will be netted. Each agreement also enables the parties to elect that, when payment dates on two or more swaps coincide, the payments due under those swaps on the same day and in the same currency will be netted. This choice may be made by specifying in the Schedule that “Net Payments—Corresponding Payment Dates” will apply. See Section 2 (c) and the Schedule.) The parties can also specify that this election will take effect at a later date if time is needed to make the necessary administrative arrangements. Alternatively, the parties may subsequently elect to apply “Net Payments—Corresponding Payment Dates” by stating this in a Confirmation.
4. **Calculation Agent.** The parties should specify the Calculation Agent in the Schedule or in each Confirmation. (The Code and the Currency Definitions define the term Calculation Agent and set forth such agent’s duties and obligations.) When using the Code-based form, parties can specify the Calculation Agent in the space provided in the Schedule (or by adding the term to a Confirmation). When using the Multi-currency form, parties can specify the Calculation Agent in the space provided in each Confirmation (or by specifying in the Schedule the party which will be the Calculation Agent).
5. **Deduction or Withholding for Taxes.** Section 19.1 of the Code contains the provisions of the Code-based form comparable to those in Section 2 (d) of the Multi-currency form. See Section III (K) of this Guide for a discussion of tax matters.
6. **Default Interest.** See Section III (N) (2) of this Guide regarding default interest.
7. **Multibranch Parties.** Each form is also designed to permit one or both of the parties to make and receive payments through more than one branch or office. See Section III (I) of this Guide.

D. Section 3—Representations

1. **General.** Section 3 contains the parties' representations (except for the representation of any Multibranch Party contained in Section 10 and except, in the case of the Code-based form, for tax representations). Users may specify additional or different representations (or make deletions) in the Schedule. Sections 3 (e) and (f) of the Multi-currency form refer to any tax representations specified by the parties in the Schedule. See Section III (K) of this Guide for a discussion of these tax representations and the comparable representations in the Code-based form. All representations are repeated as of each date on which the parties enter into a swap (other than tax representations given by a party in its capacity as a payee, which are made continuously).
2. **Accuracy of Information.** The representation in Section 3 (d) applies only to information specified in the Schedule. Parties should specify in the Schedule the documents or other information as to which this representation is made.

E. Section 4—Agreements

1. **General.** Section 4 contains the parties' supplemental agreements (except that in the Code-based form, tax covenants, if any, are contained in Section 12). Users may specify additional or different agreements (or make deletions) in the Schedule. See Section III (K) of this Guide for a discussion of tax covenants.
2. **Furnish Information.** The parties must specify in the Schedule or in a Confirmation any information or documents which are required to be delivered pursuant to Section 4 (a). Parties may wish to include requirements for financial statements or legal opinions. Delivery of credit support documents such as letters of credit or guarantees could also be included where delivery is to occur after the execution of the agreement. Any such document should be identified as a "Credit Support Document" for purposes of the cross-references in the Representations, Events of Default and other sections, if appropriate. Note that Section 4 (a) (i) of the Multi-currency form refers to tax documents and 4 (a) (ii) refers to other information. Section 4 (a) of the Code-based form is intended to refer only to non-tax information. Delivery of tax documents is addressed in Section 12 of that form.

F. Section 5—Events of Default and Termination Events

1. **General.** Section 5 contains the Events of Default and Termination Events. Users may specify additional or different Events of Default and Termination Events (or make deletions) in the Schedule. Users should note that the term "Specified Entity" is used in several Events of Default and Termination Events as noted below. Its meaning (which may vary depending on the usage) must be specified in the Schedule in each case where the parties intend the term to be applicable.
2. **Applicability of Events of Default and Termination Events.** All the Events of Default and Termination Events apply to both parties (unless otherwise specified in the Schedule), except as follows:
 - (i) **Credit Support Default.** This Event of Default refers to a default under any applicable Credit Support Document. It applies only to a party if a Credit Support Document is provided by or on behalf of that party and is identified in the Schedule.

- (ii) ***Cross-Default and Credit Event Upon Merger.*** These apply to a party only if so specified in the Schedule. These provisions were structured as “opt-in” provisions because they concern credit issues where there is variation in market practice among swap participants. In addition, the “opt-in” mechanism is expected to be useful to parties who wish to make the provisions applicable to only one party or in only some swap agreements.

3. Certain Specific Events of Default.

- (i) ***Failure to Pay.*** This Event of Default refers to a failure to pay any amount under the agreement.
- (ii) ***Breach of Covenant.*** This Event of Default refers to a failure to comply with any covenant other than any payment obligation, any tax-related covenant or the obligation to give notice of a Termination Event.
- (iii) ***Credit Support Default.*** As noted above, this Event of Default is only applicable with respect to a specified Credit Support Document. In addition, if the Credit Support Document constitutes an obligation of an entity other than a party to the agreement (such as a third party guarantee), users must specify such entity as a “Specified Entity” in the Schedule for purposes of this Event of Default.
- (iv) ***Misrepresentation.*** This Event of Default includes a breach of any representation (other than a tax representation) made in the agreement or in a Credit Support Document by the party or any applicable Specified Entity.
- (v) ***Default Under Specified Swaps.*** Users should note that this Event of Default is triggered by an event of default which results in the designation or occurrence of an early termination date under another agreement. The parties must define “Specified Entity” in the Schedule for purposes of this Event of Default if they intend it to cover such entities. Users should also note that the term “Specified Swap” is defined in each form to refer to other rate swaps and currency exchange transactions between the parties and their applicable Specified Entities. Users can define Specified Swap and Specified Entity so as to broaden or narrow this Event of Default as they wish.
- (vi) ***Cross-Default.*** As noted above, this Event of Default only applies to a party if so specified in the Schedule. In addition, users must specify a “Threshold Amount” in the Schedule and may vary the definition of Specified Indebtedness contained in each form. Users must also indicate in the Schedule the Specified Entities, if any, to which this Event of Default is to apply. This Event of Default is triggered by any of the following three events, in each case in respect of a Threshold Amount of Specified Indebtedness:
 - (1) an event of default under the other indebtedness that has resulted in the indebtedness becoming due prior to maturity, e.g., the debt has been accelerated;
 - (2) an event of default under the other indebtedness that permits the holders to declare the indebtedness due prior to maturity; or
 - (3) a failure to pay the indebtedness at maturity (which cannot, by definition, lead to acceleration prior to maturity).

Users who wish to delete the trigger referred to in clause (2) can do so by deleting the words”, or becoming capable at such time of being declared,” in clause (1) of Section 5 (a) (vi).

- (vii) **Bankruptcy.** The drafters of the forms recognize that swap participants are located in and organized under the laws of different countries around the world. Accordingly, the Bankruptcy Event of Default has been drafted with the intention that it be broad enough to be triggered by applicable proceedings or events (described in the forms in a general way) under whatever bankruptcy or insolvency law pertains to a particular party. However, where such a party is organized in a jurisdiction other than the United States or the United Kingdom, users may, in certain cases, wish to modify this provision to refer to specific provisions of applicable laws. In addition, users must indicate in the Schedule the Specified Entities, if any, to which this Event of Default is to apply.

4. ***Certain Specific Termination Events.***

- (i) **Illegality.** The definition of Illegality excludes any event which results from a breach by a party of the agreement in Section 4 (b) to maintain authorizations. (See Section 14 of the Code-based form and Section 5(b) (i) of the Multi-currency form.) In addition, if an event which constitutes an Illegality also gives rise to or constitutes an Event of Default (for example, a new law makes it illegal to make a payment, and thereby results in a payment default), it is treated as an Illegality. (See Section 5 (c) (ii) of the Code-based form and Section 5 (c) of the Multi-currency form.)
- (ii) **Tax Event.** The Tax Event Termination Event is triggered by the existence, or the substantial likelihood of the existence, of a requirement that a party pay “additional amounts” under the tax gross-up provisions. Both parts of the provision refer to a party being required to pay an additional amount on “the next succeeding” payment date. This reference is intended to provide that a Termination Event will not occur until the latest practicable time. (See Section 5 (b) (ii) .)

5. ***Events of Default and Termination Events Related to Mergers and Similar Transactions.*** Mergers, amalgamations, consolidations and transfers of all or substantially all assets are addressed in three provisions, one of which is optional, in each form. In each provision, only those mergers in which a party to the agreement merges into a third party (and therefore ceases to exist) are included, not those in which a third party merges into a party to the agreement. (All such mergers and other transactions are referred to in this Guide as “Mergers” and the party engaging in the transaction is referred to as the “Merging Party”.)

- (i) **Merger Without Assumption.** An Event of Default exists if any Merger occurs and (i) the obligations under the agreement are not assumed or (ii) any credit support previously provided is no longer available. This Event of Default is defined as a “Merger Without Assumption”. The Merging Party is the Defaulting Party. Users should note that there is no requirement in connection with a Merger Without Assumption that the new entity be incorporated or organized in the same country as the Merging Party.

- (ii) ***Tax Event Upon Merger.*** If a Merger occurs that (i) does not constitute a Merger Without Assumption but (ii) results in a requirement to withhold or deduct for taxes, then a Termination Event defined as a “Tax Event Upon Merger” exists. In such an event, only the party burdened by the tax—that is, a party who is required to gross up, or a party who receives a payment from which an amount has been deducted or withheld without a gross up—is entitled to designate an Early Termination Date. In either case, the Merging Party is the Affected Party. As in the case of a Tax Event, this Termination Event arises only after a party would be so burdened on the next payment date.
- (iii) ***Credit Event Upon Merger.*** If a Merger occurs that (i) does not constitute a Merger Without Assumption but (ii) results in a new entity whose creditworthiness is materially weaker than that of the original party as a result of the Merger, then a Termination Event defined as a “Credit Event Upon Merger” exists, but only if the parties have specified in the Schedule that Credit Event Upon Merger applies to the Merging Party. In that case, the Merging Party is the Affected Party and the non-Merging Party is entitled to designate an Early Termination Date.

G. Section 6—Early Termination

1. How to Terminate.

- (i) ***Events of Default.*** The non-defaulting party has the right to designate an Early Termination Date in the case of an Event of Default. (See Section 6 (a) and, with respect to the Code-based form, Section 11.1 of the Code.) In the case of a Bankruptcy Event of Default, early termination occurs automatically. In all other cases, notice is required as set forth in Section 6 (a).
- (ii) ***Termination Events.*** The party who is entitled to designate an Early Termination Date varies in the case of each Termination Event. (See Section 6 (b) (iv) and, with respect to the Code-based form, Section 11.1 of the Code.) The right to designate an Early Termination Date is conditioned upon compliance with any applicable provisions requiring a party with respect to whom the Termination Event has occurred to try to transfer the affected swaps to eliminate the Termination Event. Such an obligation is included in most cases on the assumption that it is preferable to continue swaps where possible. (In those cases, the other party has a right but not an obligation to transfer.) Notice requirements are also specified in Section 6 (b) (iv).

2. Effect of Termination. All swaps are terminated if an Early Termination Date is designated as the result of an Event of Default or a Credit Event Upon Merger. Only the swaps affected by the Termination Event are terminated if an Early Termination Date is designated as the result of any other Termination Event. (See the definitions of “Affected Transactions” and “Terminated Transactions” in Section 14.)

The notice designating (or the deemed occurrence of) an Early Termination Date terminates each party's obligations to make periodic payments under the Terminated Transactions. However, as discussed below, the amounts that would have been due on payment dates occurring after the effectiveness of such notice but prior to the Early Termination Date (as well as any amounts that did not become payable because of the failure to satisfy all

conditions precedent) are included in the definition of Unpaid Amounts and are thereby included in the calculation of the lump-sum payment due as a result of the early termination. (See Section 6 (c) .)

3. **Calculation of Termination Payments.** The lump-sum amount payable upon early termination consists of the sum of (i) amounts which became due but were not paid prior to the Early Termination Date, (ii) amounts which would have been due prior to the Early Termination Date if all conditions to payment (such as the absence of any Event of Default) had been satisfied or if the Early Termination Date had not been designated and (iii) amounts representing the future values of the terminated swaps. The amounts referred to in clauses (i) and (ii) are included in the definition of Unpaid Amounts and the future value of a swap is determined by a Market Quotation (or, if Market Quotation cannot be determined, Loss, as defined for purposes of the forms as described below).

These amounts are added together as follows (see Section 6 (e)):

- (i) **Event of Default.** In the case of an Event of Default, the, Market Quotations (or Losses) for all swaps, whether positive or negative, are added together. The net amount, whether positive or negative, is then added to the Unpaid Amounts due to the non-Defaulting Party. The Unpaid Amounts due to the Defaulting Party are then subtracted from this total. The net amount, if positive, is paid by the Defaulting Party. If the net amount is negative, no payment is made.

This method gives the Defaulting Party the benefit of the future value of any swap where the Market Quotation (or Loss) runs in its favor (i.e., is negative). Such value is offset against any Market Quotations in favor of the non-Defaulting Party and the Unpaid Amounts due to the non-Defaulting Party (i.e., positive amounts). (To accomplish this result, the Code-based form uses Agreement Value—Limited Two Way Payments, calculated on the basis of Aggregation, but the concept is modified to recognize any negative Aggregate Market Quotation (or Loss) in the overall calculation.) However, in no circumstances is a non-Defaulting Party required to pay a Defaulting Party.

- (ii) **Termination Event.** In the case of a Termination Event, lump-sum termination amounts are computed in the same fashion with the following modifications:

- (1) payment is made on a “two-way basis”—the absolute value of the overall sum (whether such sum is positive or negative) is paid to the appropriate party. (In the Code-based form, the use of “Agreement Value—Limited Two Way Payments”, which is defined in the Code, gives a positive amount owed to a particular party (which party depends on whether the Aggregate Market Quotation is positive or negative), and this amount is then netted against the Unpaid Amounts.); and
- (2) where there are two Affected Parties, an average of the Market Quotations determined by both parties is computed.

4. **Loss as Back-up Measure.** Loss, which is a general indemnification provision, is used as the measure of damages with respect to the future value of a swap in the event that a Market Quotation cannot be determined. The proviso included in Section 6 (e) (i) (3) of the Code-based form states that (1) a negative Loss is given effect in the case of an Event of Default and (2) only the Loss of the non-Affected Party is used in the case of a Termination Event with one Affected Party (as contrasted with computing an average of the Loss

of each party). The result should be the same in the absence of this proviso under the definition of Aggregate Market Quotation in the Code, but the proviso was added to avoid misinterpretation and to make clear that the two forms are the same in their application of Loss as the back-up measure. If parties using the Code-based form wish to use “Formula” as a back-up measure, this should be specified in the Schedule.

5. *Alternative Method of Calculating Damages.* A different method used by some participants to calculate damages in the case of an Event of Default is to provide that the Defaulting Party (1) is not entitled to the benefit, as a credit against Unpaid Amounts, of the sum of the Market Quotations if such sum is less than zero, but (2) is entitled to be paid the amount, if any, by which any net Unpaid Amounts due to it exceed the sum (if positive) of the Market Quotations. The forms can be revised to calculate damages in this manner as follows:

(i) *Code-based Form:*

- (1) delete Section 6 (e) (i) (1);
- (2) in Section 6 (e) (i) (2), delete the words “if an Early Termination Date occurs as a result of a Termination Event”, and add after the words “under clause (i)” the phrase “(or, where there is a Defaulting Party, due to the non-Defaulting Party)”; and
- (3) in Section 6 (e) (i) (3), delete the “s” on “clauses”, the words “(1 and (2)” and part (A) of the proviso.

(ii) *Multi-currency Form:*

- (1) delete Section 6 (e) (i) (1);
- (2) delete the words “(2) if there is an Affected Party”, in Section 6 (e) (i) (2); and
- (3) revise Section 6 (e) (iii) by deleting the reference to “Section 6 (e) (i) (2)” and substituting “Section 6 (e) (i)”.

The changes to either form can also be made by restating the appropriate provisions in the Schedule. To facilitate revision of the Multi-currency form in the manner outlined above, a proviso has been added to the definition of Settlement Amount in Section 14. The proviso requires that a Settlement Amount expressed as a negative number be disregarded in determining amounts payable to a Defaulting Party under Section 6(e). This proviso, which eliminates any benefit of a negative Market Quotation (or Loss), only has substantive effect if users amend the form to provide for a payment to a Defaulting Party.

6. *Currency of Termination Payment in Multi-currency Form.* The Multi-currency form provides that the payment due on early termination will be made in the “Termination Currency”. This must be specified in the Schedule. If such currency is not available, the Termination Currency is the U.S. Dollar. In calculating damages, this form provides that all Market Quotations and Unpaid Amounts are converted to a “Termination Currency Equivalent” on the basis of an exchange rate determined by a foreign exchange agent and in accordance with the form.

7. **Bankruptcy Adjustment.** Section 6(e) (iv) provides that the amount due on early termination will be adjusted in the circumstance where an Early Termination Date is deemed to have occurred as a result of a Bankruptcy Event of Default on a date prior to a payment date on which a payment was nevertheless made (for instance, where the payer was unaware of the Bankruptcy Event of Default and the deemed termination). In the absence of an adjustment, the calculation of Market Quotation could be deemed to include the period for which such payment was made, resulting in double counting.
8. **Default Interest.** See Section III(N) (2) of this Guide for a discussion of default interest.

H. Section 7—Transfer

Section 7 contains a general prohibition on transfer of rights and obligations under the agreement without prior consent. Some market participants routinely provide exceptions to this restriction in certain circumstances. Any exceptions to the transfer restriction should be set forth in the Schedule.

I. Section 10—Multibranch Provision

Section 10 was included to facilitate use of the forms by institutions such as banks that operate through branches in several locales and may wish to use a single master agreement for all such swaps. If a party intends to make and receive payments under different swaps through different branches or offices, it should be specified in the Schedule as a Multibranch Party, and the addresses of all such branches and offices should be listed. The relevant branch or office for a particular swap transaction should be specified in the Confirmation. If the parties specify that “Net Payments—Corresponding Payment Dates” applies, payments under different swaps will be netted only where such swaps are between the *same* offices of the parties. The parties may wish to consider whether different tax representations or covenants are needed with respect to payments by or to different branches or offices.

J. Notices

Addresses and telex numbers for notices must be specified in the Schedule. All notices must be in writing. (See Section 12 of the Multi-currency form and Article 14 of the Code.)

K. Tax Matters

1. **Gross Up.** Generally, payments are required to be made without any withholding or deduction for “Taxes”. However, if a party making a payment is legally required to withhold Taxes from the payment, both forms provide that the party making such withholding is required to gross up the amount of the payment for any amount it withholds on account of “Indemnifiable Taxes”. However, a party is released from its gross up obligation with respect to Indemnifiable Taxes that result from a breach of a tax-related representation or covenant made by the other party (except a breach of a tax-related representation made by a party in its capacity as a payee that results from a “Change in Tax Law”). (See Section 2 (d) of the Multi-currency form and Section 19.1 of the Code.)

2. ***Tax Representations.*** The parties must specify in the Schedule all applicable tax representations. Representations specified in the Schedule for the purposes of Section 3(f) of the Multi-currency form correspond to the Payee Tax Representations set forth in Section 19.2 of the Code. Parties may specify in the Schedule which, if any, of these representations are applicable or set forth other representations as “Payee Tax Representations”. These representations are repeated continuously. It should be noted that the Payee Tax Representations set forth as representation (a) in the Schedule of the Multi-currency form and in Section 19.2 (b) of the Code are representations as to the *party's* eligibility for treaty benefits. Neither of these representations addresses the qualification of the *payments* for treaty benefits; instead, representations to this effect are set forth as representation (b) in the Schedule of the Multi-currency form and in Sections 19.2 (c) and 19.2 (d) of the Code.

In addition, both forms contain a representation that can be specified to establish that a party is a “recognized bank” in the United Kingdom (in which case special U.K. withholding tax treatment may apply to payments made or received by it). See Section 12 (c) of the Code-based form and Section 3 (f) and the Schedule of the Multi-currency form. This representation is also made continuously.

The representation specified for the purposes of Section 3 (e) of the Multi-currency form corresponds to the Withholding Tax Representation set forth in Section 19.3 of the Code (as modified by Section 12 (a) of the Code-based form). This representation is made on each Trade Date.

For Multibranch Parties, certain tax representations may apply only to certain offices, in which case it may be necessary to attach additional sheets to the Schedule with the appropriate representations for each office. A breach of a tax-related representation does not give rise to an Event of Default but may eliminate the other party's obligation to gross up as noted in Section III (K) (1) above.

3. ***Tax Covenants.*** The parties agree to give notice of breaches of tax representations (Section 12 (a) of the Code-based form and Section 4 (d) of the Multi-currency form). In the Multi-currency form, the parties must specify in the Schedule any tax forms to be provided (a covenant to deliver any such form is contained in Section 4 (a) (i) of that form). In the Code-based form, the parties must specify in the Schedule whether any of the Code covenants, or the additional covenant set forth in Section 12 (d) of the form, concerning tax forms will apply. The Tax Covenant set forth in Section 12 (d) states that a party agrees to provide U.S. tax forms at the time required by the recent United States Department of the Treasury announcement on dollar-denominated interest rate swaps. Users may specify additional or different tax agreements (or make deletions) in the Schedule. (The Code-based form incorporates an obligation to give notice of breach of a tax covenant; the absence of this requirement in the Multi-currency form, however, will not result in any substantive difference between the forms where the only tax covenants relate to the provision of tax documents, because a breach of such a covenant will be apparent.) A breach of a tax-related covenant does not give rise to an Event of Default.

L. Credit Support Document

The parties should identify in the Schedule any Credit Support Document (such as a guarantee, security agreement or letter of credit) and the party whose obligations are supported. References are made to the Credit Support Document in appropriate Representations, Agreements, Events of Default and certain other sections.

M. Governing Law and Jurisdiction: Service of Process

- 1. General.** The provisions of the Code-based form comparable to those in Section 13 of the Multi-currency form may be found in Sections 13.1, 13.2, 18.2 and 20.3 of the Code in addition to Section 13 of the Code-based form.
- 2. Governing Law in Multi-currency Form.** When using the Multi-currency form, parties must specify in the Schedule whether New York or English law will govern. Section 13 (b) of the Multi-currency form provides that the parties submit to jurisdiction of the English courts if English law applies and in New York if New York law applies. The submission to jurisdiction in New York is non-exclusive. The submission to jurisdiction of the English courts is exclusive so far as courts of Contracting States of the European Economic Community are concerned and non-exclusive as regards other courts. This is to accommodate the provisions of the Civil Jurisdiction and Judgments Act 1982, which has recently been brought into force.
- 3. Waiver of Immunity.** The waiver of immunity in Section 13 (d) of the Multi-currency form includes language required for purposes of English law that makes such waiver slightly broader than that in Section 18.2 of the Code.
- 4. Service of Process.** If the parties wish to provide for an agent for service of process, such agent or agents should be specified in the Schedule.

N. Definitions

- 1. Business Day.** The definition of Business Day in the Multi-currency form differs from that in the Code-based form in light of currency-related concerns. (See Section 14 of the Multi-currency form and Section 1.6 of the Code.) The definition in the Multi-currency form generally refers to days when foreign exchange markets and commercial banks are open in the places specified by the parties. Section 1.3 of the Currency Definitions sets forth presumptions with respect to Business Days which apply if a Confirmation does not otherwise specify Business Days. Under these presumptions Business Days are days on which commercial banks and foreign exchange markets settle payments in the same currency as the payment obligation of a party that is payable on or calculated by reference to that date in specified cities that are financial centers for that currency, except that (i) in the case of a payment obligation that is payable in the U.S. dollar, London is specified in addition to New York if (A) that obligation is calculated by reference to LIBOR or (B) the payment obligations of the other party to the swap transaction are payable in the U.S. dollar and are calculated by reference to LIBOR (see Section 1.3 (a) (xii) of the Currency Definitions) and (ii) in the case of a payment obligation that is payable in the European Currency Unit ("ECU"), Business Days are determined by reference to the ECU non-settlement days established by the ECU Banking Association. ECU non-settlement days will be displayed on the page designated as page "ISDE" on

the Reuter Monitor Money Rates Service. They also are designated as ECU Bank Holidays on a calendar published by the ECU Banking Association.

As the presumptions in most cases relate to the currency in which a payment obligation is payable, payment dates may not coincide exactly in a swap transaction that relies on the presumptions and involves two currencies. (See Section III (O) (3) of this Guide.) If the swap transaction is related to an underlying source of funding or debt obligation, the parties should refer to that source of funding or debt obligation to determine the Business Days that are appropriate for the swap transaction if they want the payment obligations under the swap transaction to coincide exactly with the payment obligations under the source of funding or debt obligation.

The definition of Business Day in the Code-based form refers to days when commercial banks are open in New York City or in another city specified by the parties, which city may be specified in the Schedule or in a Confirmation. Section 1.2 of the Currency Definitions provides a definition of "Banking Day" which refers to days when commercial banks (including foreign exchange markets) are open in a specified city or cities.

The presumptions in the Code and in the Currency Definitions provide for the same adjustments to payment dates in a U.S. Dollar interest rate swap.

2. *Default Rate and Interest on Unpaid Amounts and Termination Payments.*

- (i) *Default Rate.* The Default Rate in the Code-based form is equal to the rate determined in accordance with the Federal Funds Floating Rate Option plus the Default Spread. The Default Spread must be specified in the Schedule. In the Multi-currency form the rate is equal to the payee's cost of funding rate plus 1%, since no published index exists covering all possible currencies. Under both forms, interest is calculated on the basis of daily compounding. (See Sections 2 (e) and 14 of the Multi-currency form and Section 14 of the Code-based form and Section 10.3 of the Code.)
- (ii) *Interest on Unpaid Amounts.* See Section III (G) (3) of this Guide for a general discussion of the definition of Unpaid Amounts. The interest rate applied to Unpaid Amounts as set forth in that definition is equal to the Default Rate when such amounts are due by a Defaulting Party. A lower rate is used for amounts due by a non-Defaulting Party or in connection with a Termination Event. The Multi-currency form creates two different lower rates in those cases. The rate is equal to the cost of funds to the non-Defaulting Party in the case of an Event of Default and to an average of the cost of funds to each party in the case of a Termination Event. (An average of rates is not used in the case of amounts due by a non-Defaulting Party so that such party is not obligated to obtain a rate from the Defaulting Party in order to make its calculations.) Interest is calculated on the basis of daily compounding. (See Section 14.)
- (iii) *Interest on Termination Payments.* In addition to the interest on Unpaid Amounts described above, interest is calculated on termination payments under two provisions (in each case on the basis of daily compounding). Sections 6 (d) of the Code-based form and 6 (d) (ii) of the Multi-currency Form provide that interest will accrue on a termination payment from the Early Termination Date to the relevant

due date. The due date in the case of an Event of Default is the day that notice of the amount payable is effective and in the case of a Termination Event is the second Business Day after the day that notice of the amount payable is effective. During such period, interest accrues at the Default Rate in the case of an Event of Default and at the Default Rate minus the Default Spread (in the case of the Code-based form) or the Default Rate minus 1% (in the case of the Multi-currency form) in the case of a Termination Event. This interest is calculated on the basis of daily compounding. If the termination payment is not paid on the relevant due date, interest will accrue at the Default Rate under Section 2 (e) of the Multi-currency form and Section 10.3 of the Code.

3. **Specified Entity.** As noted earlier (see Section III (F) of this Guide), the term Specified Entity is used in relation to the following terms:
- (i) “Credit Support Document” (and, in relation to a specified Credit Support Document, in Credit Support Default, Misrepresentation and Illegality);
 - (ii) Default Under Specified Swaps;
 - (iii) Cross-Default; and
 - (iv) Bankruptcy.

Users must specify in the Schedule the meaning of Specified Entity for each term (if applicable). This definition can be the same or may vary depending on the usage. Users can, if they wish, state that “Specified Entity” will mean “Affiliate”. This term is defined in Section 14 of the Multi-currency form and Section 17.2 of the Code (and may be amended by the parties as they wish).

4. **Other Definitions.** See Section III (F) (3) (iv) of this Guide regarding the definition of Specified Swaps and Section III (F) (3) (v) regarding the definitions of Specified Indebtedness and Threshold Amount.

O. Confirmations

Exhibit I to the Code-based form sets forth a form of Confirmation for use with that agreement, and Exhibit I to the Currency Definitions sets forth a form of Confirmation for use with the Multi-currency form. These Exhibits are intended to be guides. The parties should prepare actual letter or telex Confirmations by retyping these forms, with such changes and additions as are necessary.

1. **General.** The provisions in each Confirmation for specifying payment terms are similar. The Multi-currency form Confirmation includes certain provisions (“Notional Amount”) which would only be applicable if the swap transaction involves a single currency and certain provisions (“Initial Exchange”, “Final Exchange”, “Fixed Rate Payer Currency Amount”, “Floating Rate Payer Currency Amount” and “Account for payments in [second currency]”) which would only be applicable if the swap transaction involves two currencies. In addition, the Currency Definitions (which are incorporated into the Multi-currency form Confirmation) include certain terms the meaning of which may vary depending upon the currency in which the related payment obligations are payable, unless the parties specify otherwise. The Currency Definitions also set forth provisions relating to payments in European Currency Units.

Each Confirmation is designed for transactions involving one Fixed Rate

Payer and one Floating Rate Payer. If the transaction involves two Floating Rate Payers, the Fixed Amounts section should be deleted, and two Floating Amounts sections should be set forth. To distinguish each party's Floating Amount obligations, a party's name should be added in front of "Floating Amounts" and "Floating Rate" and in lieu of "Floating Rate Payer" in each such section.

2. *Specifying Payment Dates and Period End Dates.* Section 2 of each Confirmation sets forth a term for specifying "Fixed Rate Payment Dates" and "Floating Rate Payment Dates" and lists conventions contained in the Code and the Currency Definitions for adjusting those days should a Payment Date occur on a day which is not a good business day. The parties may need to modify these terms and choices, or use the bracketed language that refers to Period End Dates, depending on the terms of the particular transaction. The following examples illustrate some of these options:

- (i) *If Payment Dates coincide with Period End Dates:* The parties should specify Payment Dates and delete the bracketed references to Period End Dates.
- (ii) *If Payment Dates are to occur a fixed number of days before or after the Period End Dates:* The parties should specify Period End Dates instead of Payment Dates. The parties should also specify that "Early Payment" or "Delayed Payment" applies and the applicable number of days by which Payment Dates will precede or follow Period End Dates. Note, however, that "Delayed Payment" in the Code presumes that Payment Dates will occur five New York Banking Days after the Period End Dates; this presumption must be overridden in a Confirmation under the Code-based form if another interval is desired.
- (iii) *If Payment Dates are to occur on certain fixed dates and Period End Dates are to occur on other fixed dates:* Period End Dates and Payment Dates should be specified separately.

Note that in all of these cases the parties should consider what adjustments, if any, are to be made to Payment Dates or Period End Dates occurring on days which are not Business Days. The Code and the Currency Definitions set forth presumptions as to what conventions apply in certain circumstances, and the parties must specify the appropriate convention to overrule these presumptions.

3. *Business Days.* The Multi-currency form Confirmation has specific provisions for specifying Business Days according to the currency of the related payment obligation. These provisions need not be included in the Confirmation if the parties want the presumptions of Section 1.3 of the Currency Definitions to determine Business Days for purposes of the swap transaction. The parties should be aware that if the presumptions apply to a swap transaction involving two currencies, the payment obligations of both parties to the swap transaction may not fall on the same dates. If the parties want their payment obligations to fall on the same dates, they should specify the cities or days applicable to the swap transaction in the Confirmation. Parties also can specify additional cities or days or particular cities for currencies not covered by the presumptions. If the parties want to change the presumptions of Section 1.3 by adding cities or days, they should specify all the cities and days that are to apply in the Confirmation to payment obligations in that currency or for the swap transaction. (See also Section III (N) (1) of this Guide.)

The Code-based form Confirmation contains no specific provision to specify Business Days. The Code presumes that Business Day will mean New York Banking Day, unless the parties specify otherwise. The parties may, of course, specify an alternative meaning in the Schedule or in a Confirmation. Note that Period End Dates, Payment Dates and the conventions for adjusting these dates in the Code refer to New York Banking Days and, where appropriate, London Banking Days, not to Business Days.

4. ***Specifying Accounts and offices.*** The Multi-currency form Confirmation has specific provisions for specifying accounts for payments. When using the Code-based form of Confirmation, the parties should also specify the accounts in the Confirmation if such information is not included in the Schedule. The Multi-currency form Confirmation also includes a provision to specify the Offices through which payments are to be made and received where a party is acting as a Multibranch Party. When using the Code-based form of Confirmation, this information should also be included if applicable.
5. ***Other Provisions.*** The parties should add such other provisions to the Confirmation to modify or supplement their agreement with respect to the particular swap transaction as they see fit.
6. ***Confirmations Where Agreement Is Not Executed.*** Although the Exhibits are designed to be used for Confirmations where the parties have already entered into an Interest Rate Swap Agreement or Interest Rate and Currency Exchange Agreement, the forms may also be used, with some revisions, where the parties have not entered into such an agreement at the time they wish to confirm a transaction but anticipate doing so. The following changes may be made:

- (i) Include the following paragraph in lieu of the paragraph in Section 1 of each Confirmation:

“This Confirmation evidences a complete binding agreement between you and us as to the terms of the [Rate] Swap Transaction to which this Confirmation relates. In addition, upon the execution by you and us of an [Interest Rate Swap Agreement/Interest Rate and Currency Exchange Agreement] (the “Agreement”), in the form published by the International Swap Dealers Association, Inc. [(“ISDA”)], with such modifications as you and we shall in good faith agree, this Confirmation will supplement, form a part of, and be subject to the Agreement. All provisions contained or incorporated by reference in such Agreement upon its execution shall govern this Confirmation except as expressly modified below.”

If intending to use the Code-based form, also include the following in this paragraph:

“This Confirmation is subject to and incorporates the Code of Standard Wording, Assumptions and Provisions for Swaps, 1986 Edition, as published by ISDA. In the event of any inconsistency between the Code and this Confirmation, this Confirmation will prevail.”

- (ii) Include a paragraph stating each party's obligations to make payments. This paragraph would set forth the essential provisions contained in Section 2 of each form. The following are examples:

- (1) For inclusion in a Confirmation under the Code-based form:

“Each party will make each payment specified in this Confirmation

as being payable by it by transfer of the relevant amount in freely transferable funds to the account of the other party specified below. The Fixed Amount or Floating Amount applicable to a Payment Date will be the Fixed Amount or Floating Amount calculated with reference to the Calculation Period ending on, but excluding, the Period End Date (or in case of the Final Calculation Period, the Termination Date) that coincides with, or corresponds to, that Payment Date. The obligations of the parties under this Confirmation will be calculated and payable on the basis of Net Payments.”

(2) For inclusion in a Confirmation under the Multi-currency form:

“Each party will make each payment specified in this Confirmation as being payable by it, not later than the due date for value on that date in the place of the account specified below, in freely transferable funds and in the manner customary for payments in the required currency. If on any date amounts would otherwise be payable in the same currency by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.”

(iv) In the Multi-currency form, insert a paragraph specifying the governing law for the Confirmation.

(v) Although it is not necessary to include any other provisions in the Confirmation in order to have a binding agreement, the parties may wish to consider including other provisions that would otherwise be in the basic agreement where such provisions are important to the business terms of the transaction (e.g., events of default, representations and agreements). Certain provisions, such as the obligation to pay without withholding for taxes, would be included in the Code-based form Confirmation because the Code is incorporated into it. Parties using the Multi-currency form Confirmation may wish to consider specifying such provisions.