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**2003 ISDA**

**Credit Derivatives**

**Definitions**

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**ISDA<sup>®</sup>**

**INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.**

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## INTRODUCTION

The 2003 ISDA Credit Derivatives Definitions (the "Definitions") are intended for use in confirmations of individual credit derivative transactions ("Confirmations") governed by agreements such as the 1992 ISDA Master Agreements or the 2002 ISDA Master Agreement published by the International Swaps and Derivatives Association, Inc. ("ISDA"). Copies of the ISDA Master Agreements are available from the executive offices of ISDA or from the ISDA website ([www.isda.org](http://www.isda.org)). A sample form of Confirmation for use with the Definitions is attached as Exhibit A to these Definitions.

The Definitions primarily expand and revise the 1999 ISDA Credit Derivatives Definitions and the Supplements to them. The Definitions provide the basic framework for the documentation of certain privately negotiated credit derivative transactions. For ease of use, certain sections of the Definitions provide fallback provisions that will apply to a transaction if the parties do not specify otherwise in the Confirmation.

As in the case of other product-specific definitions published by ISDA, parties using the Definitions to document privately negotiated credit derivative transactions may adapt or supplement the standard provisions set out in these Definitions in accordance with the specific economic terms agreed between the parties to the relevant transaction.

The Definitions are intended to operate on a free-standing basis and therefore, for most transactions, there is no need to incorporate any other ISDA definitions booklets (such as the 2000 ISDA Definitions) into the Confirmation of a Credit Derivative Transaction.

ISDA has provided these Definitions to assist the smooth and efficient functioning of the credit derivatives market by providing a common set of terms for parties to use in preparing Confirmations for privately negotiated credit derivative transactions. *However, the precise documentation of each individual transaction remains the responsibility of the parties concerned. ISDA assumes no responsibility for any use to which these Definitions may be put, including, without limitation, any use of these Definitions in connection with any privately negotiated credit derivative transaction. Each party to a transaction evidenced by a Confirmation referring to or incorporating these Definitions must satisfy itself that the Definitions are appropriate for the transaction, have been properly used and/or adapted in the Confirmation for the transaction and that the Confirmation has generally been properly drafted, in each case, to reflect the commercial intentions of the parties. It should be noted that Confirmations that incorporate the 1999 ISDA Credit Derivatives Definitions shall continue to be governed by the 1999 ISDA Credit Derivatives Definitions. By using these Definitions to document a Credit Derivative Transaction, no inference shall be made as to the meaning of any provision in the 1999 ISDA Credit Derivatives Definitions.*

This Introduction is not part of the Definitions and is not offered as an interpretation of the Definitions. The Notices referred to in the Definitions are not required to be in the form set forth in the Exhibits.

## 2003 ISDA CREDIT DERIVATIVES DEFINITIONS

Any or all of the following definitions and provisions may be incorporated into a document by wording in the document indicating that, or the extent to which, the document is subject to the 2003 ISDA Credit Derivatives Definitions (as published by the International Swaps and Derivatives Association, Inc. ("ISDA")) (the "Definitions"). All definitions and provisions so incorporated in a document will be applicable to that document unless otherwise provided in that document, and all terms defined in these Definitions and used in any definition or provision that is incorporated by reference in a document will have the respective meanings set forth in these Definitions unless otherwise provided in that document. The definitions of Currencies shall have the meanings given to those terms in the 2000 ISDA Definitions. Any term used in a document will, when combined with the name of a party, have meaning in respect of the named party only.

### ARTICLE I

#### CERTAIN GENERAL DEFINITIONS

**Section 1.1. Credit Derivative Transaction.** "Credit Derivative Transaction" means any transaction that is identified in the related Confirmation as a Credit Derivative Transaction or any transaction that incorporates these Definitions.

**Section 1.2. Confirmation.** "Confirmation" means, with respect to a Credit Derivative Transaction, one or more documents and other confirming evidence exchanged between the parties or otherwise effective which, taken together, confirm or evidence all of the terms of a Credit Derivative Transaction.

**Section 1.3. Term.** "Term" means the period commencing on and including the Effective Date of a Credit Derivative Transaction and ending on and including the Termination Date of such Credit Derivative Transaction.

**Section 1.4. Effective Date.** "Effective Date" means the date specified as such in the related Confirmation, which date is the first day of the Term of the Credit Derivative Transaction. The Effective Date shall not be subject to adjustment in accordance with any Business Day Convention unless the parties specify in a Confirmation that the Effective Date will be adjusted in accordance with a specified Business Day Convention.

**Section 1.5. Trade Date.** "Trade Date" means the date on which the parties enter into the Credit Derivative Transaction, as specified in the related Confirmation.

**Section 1.6. Scheduled Termination Date.** "Scheduled Termination Date" means the date specified as such in the related Confirmation. The Scheduled Termination Date shall not be subject to adjustment in accordance with any Business Day Convention unless the parties specify in a Confirmation that the Scheduled Termination Date will be adjusted in accordance with a specified Business Day Convention.



**Section 1.7. Termination Date.** "Termination Date" means either (a) the date as determined in accordance with Section 1.11 (Grace Period Extension Date), 3.4 (Notice of Physical Settlement), 4.6(b) (Repudiation/Moratorium Evaluation Date), 7.2 (Cash Settlement Date), 8.4 (Physical Settlement Date), 9.2(c)(ii) (Additional Representations and Agreements for Physical Settlement), 9.3 (Partial Cash Settlement Due to Impossibility or Illegality) or 9.8 (Partial Cash Settlement Terms) (as relevant) or (b) if none of such Sections is relevant, the Scheduled Termination Date.

**Section 1.8. Event Determination Date.** "Event Determination Date" means the first date on which both the Credit Event Notice and, if applicable, the Notice of Publicly Available Information are effective.

**Section 1.9. Notice Delivery Period.** "Notice Delivery Period" means the period from and including the Effective Date to and including the date that is fourteen calendar days after (a) the Scheduled Termination Date; (b) the Grace Period Extension Date if (i) Grace Period Extension is specified as applicable in the related Confirmation, (ii) the Credit Event that is the subject of the Credit Event Notice is a Failure to Pay that occurs after the Scheduled Termination Date and (iii) the Potential Failure to Pay with respect to such Failure to Pay occurs on or prior to the Scheduled Termination Date; or (c) the Repudiation/Moratorium Evaluation Date if (i) the Credit Event that is the subject of the Credit Event Notice is a Repudiation/Moratorium that occurs after the Scheduled Termination Date, (ii) the Potential Repudiation/Moratorium with respect to such Repudiation/Moratorium occurs on or prior to the Scheduled Termination Date and (iii) the Repudiation/Moratorium Extension Condition is satisfied.

**Section 1.10. Requirements Regarding Notices.** A notice delivered on or prior to 4:00 p.m. (Calculation Agent City time) on a Calculation Agent City Business Day will be effective on such Calculation Agent City Business Day. A notice delivered after 4:00 p.m. (Calculation Agent City time) on a Calculation Agent City Business Day will be deemed effective on the next following Calculation Agent City Business Day, regardless of the form in which it is delivered. For purposes of the two preceding sentences, a notice given by telephone will be deemed to have been delivered at the time the telephone conversation takes place. If the notice is delivered by telephone, a written confirmation will be executed and delivered confirming the substance of that notice within one Business Day of that notice. Failure to provide that written confirmation will not affect the effectiveness of that telephonic notice. If the Calculation Agent is not a party to the Credit Derivative Transaction, any notice required to be delivered by a party to the other party shall also be delivered to the Calculation Agent; provided, however, that failure to deliver a notice to the Calculation Agent in such circumstances shall not affect the effectiveness of the notice delivered to the other party.

**Section 1.11. Grace Period Extension Date.** "Grace Period Extension Date" means, if (a) Grace Period Extension is specified as applicable in the related Confirmation and (b) a Potential Failure to Pay occurs on or prior to the Scheduled Termination Date, the date that is the number of days in the Grace Period after the date of such Potential Failure to Pay. If Grace Period Extension is not specified as applicable in the related Confirmation, Grace Period Extension shall not apply to the Credit Derivative Transaction. If (i) Grace Period Extension is specified as applicable in the related Confirmation, (ii) a Potential Failure to Pay occurs on or prior to the Scheduled Termination Date and (iii) an Event Determination Date in respect of that Failure to Pay does not occur during

the Notice Delivery Period, the Grace Period Extension Date will be the Termination Date (even if a Failure to Pay occurs after the Scheduled Termination Date).

**Section 1.12. Grace Period; Grace Period Business Day.**

(a) "Grace Period" means:

(i) subject to clauses (ii) and (iii), the applicable grace period with respect to payments under the relevant Obligation under the terms of such Obligation in effect as of the later of the Trade Date and the date as of which such Obligation is issued or incurred;

(ii) if Grace Period Extension is specified in the related Confirmation as applicable, a Potential Failure to Pay has occurred on or prior to the Scheduled Termination Date and the applicable grace period cannot, by its terms, expire on or prior to the Scheduled Termination Date, the Grace Period shall be deemed to be the lesser of such grace period and the period specified as such in the related Confirmation or, if no period is specified, thirty calendar days; and

(iii) if, at the later of the Trade Date and the date as of which an Obligation is issued or incurred, no grace period with respect to payments or a grace period with respect to payments of less than three Grace Period Business Days is applicable under the terms of such Obligation, a Grace Period of three Grace Period Business Days shall be deemed to apply to such Obligation; provided that, unless Grace Period Extension is specified as applicable in the related Confirmation, such deemed Grace Period shall expire no later than the Scheduled Termination Date.

(b) "Grace Period Business Day" means a day on which commercial banks and foreign exchange markets are generally open to settle payments in the place or places and on the days specified for that purpose in the relevant Obligation and if a place or places are not so specified, in the jurisdiction of the Obligation Currency.

**Section 1.13. Potential Failure to Pay.** "Potential Failure to Pay" means the failure by a Reference Entity to make, when and where due, any payments in an aggregate amount of not less than the Payment Requirement under one or more Obligations, without regard to any grace period or any conditions precedent to the commencement of any grace period applicable to such Obligations, in accordance with the terms of such Obligations at the time of such failure.

**Section 1.14. Calculation Agent.** "Calculation Agent" means the party to a Credit Derivative Transaction (or a third party) specified as such in the related Confirmation (or, if a person is not so specified, Seller) and who, if necessary (and in accordance with the terms specified in the related Confirmation), is responsible for: (a) determining a Successor or Successors and making any other determinations required to be made under Section 2.2; (b) determining whether (i) the aggregate amounts due under any Reference Obligation have been materially reduced by redemption or otherwise (other than due to any scheduled redemption, amortization or prepayments), (ii) any Reference Obligation is an Underlying Obligation with a Qualifying Guarantee of a Reference Entity and, other than due to the existence or occurrence of a Credit

Event, the Qualifying Guarantee is no longer a valid and binding obligation of such Reference Entity enforceable in accordance with its terms, or (iii) for any reason other than as described in (i) or (ii) above and other than due to the existence or occurrence of a Credit Event, any Reference Obligation is no longer an obligation of a Reference Entity; (c) identifying and determining a Substitute Reference Obligation (after consultation with the parties); (d) in the event that multiple Credit Event Notices with respect to a Restructuring Credit Event are delivered pursuant to Section 3.9, making any modifications required pursuant to that Section (after consultation with the parties); (e) obtaining Quotations (and, if necessary, determining (after consultation with the parties) whether such Quotations shall include or exclude accrued but unpaid interest) and determining the Final Price in accordance with the applicable Valuation Method; (f) converting the Quotation Amount into the relevant Obligation Currency; (g) determining (after consultation with the parties) the Dealers (where none have been specified in the Confirmation) and substituting Dealers; (h) determining the Currency Rate; (i) determining (after consultation with the parties) the Representative Amount; (j) determining (after consultation with the parties) the number of Business Days in each Physical Settlement Period; (k) if "Include Accrued Interest" is specified in the related Confirmation with respect to Deliverable Obligations, determining (after consultation with the parties) accrued but unpaid interest; and (l) determining the Accreted Amount of any Accreting Obligation. Whenever the Calculation Agent is required to act or to exercise judgment, it will do so in good faith and in a commercially reasonable manner. The Calculation Agent shall, as soon as practicable after making any of the determinations specified in subclauses (a) through (l), notify the parties of such determination. Furthermore, each party agrees that the Calculation Agent is not acting as a fiduciary for or as an advisor to such party in respect of its duties as Calculation Agent in connection with any Credit Derivative Transaction.

**Section 1.15. Calculation Agent City.** "Calculation Agent City" means the city specified as such in the related Confirmation or, if a city is not so specified, the city in which the office through which the Calculation Agent is acting for purposes of the Credit Derivative Transaction is located.

**Section 1.16. Business Day.** "Business Day" means a day on which commercial banks and foreign exchange markets are generally open to settle payments in the place or places and on the days specified for that purpose in the relevant Confirmation, a TARGET Settlement Day (if "TARGET" or "TARGET Settlement Day" is specified for that purpose in the related Confirmation), or if a place or places or such terms are not so specified, a day on which commercial banks and foreign exchange markets are generally open to settle payments in the jurisdiction of the currency of the Floating Rate Payer Calculation Amount.

**Section 1.17. Calculation Agent City Business Day.** "Calculation Agent City Business Day" means a day on which commercial banks and foreign exchange markets are generally open to settle payments in the Calculation Agent City.

**Section 1.18. 2002 ISDA Master Agreement.** The terms "Additional Termination Event", "Affected Party", "Affected Transaction", "Affiliate", "Close-out Amount", "Stamp Tax" and "Tax" shall have the meanings given to those terms in the standard form 2002 ISDA Master Agreement (the "2002 ISDA Master Agreement").

**Section 1.19. Buyer.** "Buyer" means the Fixed Rate Payer.

**Section 1.20. Seller.** "Seller" means the Floating Rate Payer.

**Section 1.21. TARGET Settlement Day.** "TARGET Settlement Day" means any day on which TARGET (the Trans-European Automated Real-time Gross settlement Express Transfer system) is open.

## ARTICLE II

### GENERAL TERMS RELATING TO CREDIT DERIVATIVE TRANSACTIONS

**Section 2.1. Reference Entity.** "Reference Entity" means the entity or entities specified as such in the related Confirmation. Any Successor to a Reference Entity identified pursuant to Section 2.2 shall be the Reference Entity for the Credit Derivative Transaction or a New Credit Derivative Transaction as determined pursuant to such Section 2.2.

#### **Section 2.2. Provisions for Determining a Successor.**

(a) "Successor" means in relation to a Reference Entity that is not a Sovereign, the entity or entities, if any, determined as set forth below:

(i) if one entity directly or indirectly succeeds to seventy-five per cent or more of the Relevant Obligations of the Reference Entity by way of a Succession Event, that entity will be the sole Successor for the entire Credit Derivative Transaction;

(ii) if only one entity directly or indirectly succeeds to more than twenty-five per cent (but less than seventy-five per cent) of the Relevant Obligations of the Reference Entity by way of a Succession Event, and not more than twenty-five per cent of the Relevant Obligations of the Reference Entity remain with the Reference Entity, the entity that succeeds to more than twenty-five per cent of the Relevant Obligations will be the sole Successor for the entire Credit Derivative Transaction;

(iii) if more than one entity each directly or indirectly succeeds to more than twenty-five per cent of the Relevant Obligations of the Reference Entity by way of a Succession Event, and not more than twenty-five per cent of the Relevant Obligations of the Reference Entity remain with the Reference Entity, the entities that succeed to more than twenty-five per cent of the Relevant Obligations will each be a Successor for a New Credit Derivative Transaction determined in accordance with the provisions of Section 2.2(e);

(iv) if one or more entities each directly or indirectly succeeds to more than twenty-five per cent of the Relevant Obligations of the Reference Entity by way of a Succession Event, and more than twenty-five per cent of the Relevant Obligations of the Reference Entity remain with the Reference Entity, each such entity and the Reference Entity will each be a Successor for a New Credit Derivative Transaction determined in accordance with the provisions of Section 2.2(e);

(v) if one or more entities directly or indirectly succeed to a portion of the Relevant Obligations of the Reference Entity by way of a Succession Event, but no entity succeeds to more than twenty-five per cent of the Relevant Obligations of the Reference Entity and the Reference Entity continues to exist, there will be no

Successor and the Reference Entity and the Credit Derivative Transaction will not be changed in any way as a result of the Succession Event; and

(vi) if one or more entities directly or indirectly succeed to a portion of the Relevant Obligations of the Reference Entity by way of a Succession Event, but no entity succeeds to more than twenty-five per cent of the Relevant Obligations of the Reference Entity and the Reference Entity ceases to exist, the entity which succeeds to the greatest percentage of Relevant Obligations (or, if two or more entities succeed to an equal percentage of Relevant Obligations, the entity from among those entities which succeeds to the greatest percentage of obligations of the Reference Entity) will be the sole Successor.

The Calculation Agent will be responsible for determining, as soon as reasonably practicable after it becomes aware of the relevant Succession Event (but no earlier than fourteen calendar days after the legally effective date of the Succession Event), and with effect from the legally effective date of the Succession Event, whether the relevant thresholds set forth above have been met, or which entity qualifies under Section 2.2(a)(vi), as applicable. In calculating the percentages used to determine whether the relevant thresholds set forth above have been met, or which entity qualifies under Section 2.2(a)(vi), as applicable, the Calculation Agent shall use, in respect of each applicable Relevant Obligation included in such calculation, the amount of the liability in respect of such Relevant Obligation listed in the Best Available Information and shall notify the parties of such calculation.

(b) "Succession Event" means an event such as a merger, consolidation, amalgamation, transfer of assets or liabilities, demerger, spin-off or other similar event in which one entity succeeds to the obligations of another entity, whether by operation of law or pursuant to any agreement. Notwithstanding the foregoing, "Succession Event" shall not include an event in which the holders of obligations of the Reference Entity exchange such obligations for the obligations of another entity, unless such exchange occurs in connection with a merger, consolidation, amalgamation, transfer of assets or liabilities, demerger, spin-off or other similar event.

(c) For purposes of Section 2.2, "succeed" means, with respect to a Reference Entity and its Relevant Obligations (or, as applicable, obligations), that a party other than such Reference Entity (i) assumes or becomes liable for such Relevant Obligations (or, as applicable, obligations) whether by operation of law or pursuant to any agreement or (ii) issues Bonds that are exchanged for Relevant Obligations (or, as applicable, obligations), and in either case such Reference Entity is no longer an obligor (primarily or secondarily) or guarantor with respect to such Relevant Obligations (or, as applicable, obligations). The determinations required pursuant to Section 2.2(a) shall be made, in the case of an exchange offer, on the basis of the outstanding principal balance of Relevant Obligations tendered and accepted in the exchange and not on the basis of the outstanding principal balance of Bonds for which Relevant Obligations have been exchanged.

(d) Where:

(i) a Reference Obligation has been specified with respect to a Credit Derivative Transaction;

(ii) one or more Successors to the Reference Entity have been identified;  
and

(iii) any one or more such Successors have not assumed the Reference  
Obligation,

a Substitute Reference Obligation will be determined in accordance with the provisions of Section 2.30 with respect to each relevant Credit Derivative Transaction.

(e) Where, pursuant to Section 2.2(a)(iii) or (iv), more than one Successor has been identified, the relevant Credit Derivative Transaction will be divided into the same number of new Credit Derivative Transactions (the "New Credit Derivative Transactions") as there are Successors, with the following terms:

(i) each Successor will be the Reference Entity for the purposes of one of the New Credit Derivative Transactions;

(ii) in respect of each New Credit Derivative Transaction, the Fixed Rate Payer Calculation Amount, if any, the Floating Rate Payer Calculation Amount and, if there is not a Floating Rate Payer Calculation Amount, the Cash Settlement Amount will be the Fixed Rate Payer Calculation Amount, the Floating Rate Payer Calculation Amount and the Cash Settlement Amount, as applicable, of the original Credit Derivative Transaction divided by the number of Successors; and

(iii) all other terms and conditions of the original Credit Derivative Transaction will be replicated in each New Credit Derivative Transaction except to the extent that modification is required, as determined by the Calculation Agent (in consultation with the parties), to preserve the economic effects of the original Credit Derivative Transaction in the New Credit Derivative Transactions (considered in the aggregate).

(f) "Relevant Obligations" means the Obligations constituting Bonds and Loans of the Reference Entity outstanding immediately prior to the effective date of the Succession Event, excluding any debt obligations outstanding between the Reference Entity and any of its Affiliates, as determined by the Calculation Agent. The Calculation Agent will determine the entity which succeeds to such Relevant Obligations on the basis of the Best Available Information. If the date on which the Best Available Information becomes available or is filed precedes the legally effective date of the relevant Succession Event, any assumptions as to the allocation of obligations between or among entities contained in the Best Available Information will be deemed to have been fulfilled as of the legally effective date of the Succession Event, whether or not this is in fact the case.

(g) "Best Available Information" means:

(i) in the case of a Reference Entity which files information with its primary securities regulator or primary stock exchange that includes unconsolidated, pro forma financial information which assumes that the relevant Succession Event

has occurred or which provides such information to its shareholders, creditors or other persons whose approval of the Succession Event is required, that unconsolidated, pro forma financial information and, if provided subsequently to the provision of unconsolidated, pro forma financial information but before the Calculation Agent makes its determination for the purposes of this Section 2.2, other relevant information that is contained in any written communication provided by the Reference Entity to its primary securities regulator, primary stock exchange, shareholders, creditors or other persons whose approval of the Succession Event is required; or

(ii) in the case of a Reference Entity which does not file with its primary securities regulators or primary stock exchange, and which does not provide to shareholders, creditors or other persons whose approval of the Succession Event is required, the information contemplated in (i) above, the best publicly available information at the disposal of the Calculation Agent to allow it to make a determination for the purposes of this Section 2.2.

Information which is made available more than fourteen calendar days after the legally effective date of the Succession Event shall not constitute Best Available Information.

(h) In relation to a Sovereign Reference Entity, "Successor" means any direct or indirect successor(s) to that Reference Entity irrespective of whether such successor(s) assumes any of the obligations of such Reference Entity.

**Section 2.3. Reference Obligation.** "Reference Obligation" means each obligation specified as such or of a type described in the related Confirmation (if any are so specified or described) and any Substitute Reference Obligation.

**Section 2.4. Reference Price.** "Reference Price" means the percentage specified as such in the related Confirmation or, if a percentage is not so specified, one hundred per cent.

**Section 2.5. Fixed Amount.** "Fixed Amount" means, in respect of a Credit Derivative Transaction and a Fixed Rate Payer, an amount that, subject to any applicable condition precedent, is payable by the Fixed Rate Payer on a Fixed Rate Payer Payment Date and is specified in the related Confirmation or, if no such amount is specified, is determined in accordance with Article V of these Definitions or such other method as has been agreed by the parties.

**Section 2.6. Fixed Rate Payer.** "Fixed Rate Payer" means, in respect of a Credit Derivative Transaction, the party obligated to make one or more payments of a Fixed Amount as specified in the related Confirmation.

**Section 2.7. Fixed Rate Payer Calculation Amount.** "Fixed Rate Payer Calculation Amount" means the amount specified as such in the related Confirmation or, if an amount is not so specified, the Floating Rate Payer Calculation Amount.



**Section 2.8. Fixed Rate Payer Period End Date.** "Fixed Rate Payer Period End Date" means each date specified as such in the related Confirmation or, if no such dates are specified, each date specified in the related Confirmation as a Fixed Rate Payer Payment Date.

**Section 2.9. Fixed Rate Payer Calculation Period.** "Fixed Rate Payer Calculation Period" means each period from, and including, one Fixed Rate Payer Period End Date to, but excluding, the next following Fixed Rate Payer Period End Date, except that (a) the initial Fixed Rate Payer Calculation Period will commence on, and include, the Effective Date, and (b) the final Fixed Rate Payer Calculation Period will end on, and include, the earlier to occur of the Scheduled Termination Date and the Event Determination Date.

**Section 2.10. Fixed Rate Payer Payment Date.** "Fixed Rate Payer Payment Date" means each date during the term of the Transaction specified as such in the related Confirmation, provided that if an Event Determination Date occurs, the earlier of the Termination Date and the first Settlement Date with respect to the Credit Event to which such Event Determination Date relates, shall be the final Fixed Rate Payer Payment Date.

**Section 2.11. Business Day Convention.**

(a) "Business Day Convention" means the convention for adjusting any relevant date if it would otherwise fall on a day that is not a Business Day. The following terms, when used in conjunction with the term "Business Day Convention" and a date, shall mean that an adjustment will be made if that date would otherwise fall on a day that is not a Business Day so that:

(i) if "Following" is specified, that date will be the first following day that is a Business Day;

(ii) if "Modified Following" or "Modified" is specified, that date will be the first following day that is a Business Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day; and

(iii) if "Preceding" is specified, that date will be the first preceding day that is a Business Day.

(b) The Business Day Convention applicable to a date that is specified in a Confirmation to be subject to adjustment in accordance with an applicable Business Day Convention shall be the Business Day Convention specified for that date in that Confirmation or, if a Business Day Convention is not so specified for that date but a Business Day Convention is specified in a Confirmation for a Credit Derivative Transaction, the Business Day Convention shall be, subject to Sections 1.4 and 1.6, the Business Day Convention specified in the Confirmation for that Credit Derivative Transaction and, if a Business Day Convention is not specified for that date or in the Confirmation, the "Following" Business Day Convention, subject to Sections 1.4 and 1.6, shall apply to that date.

(c) In the event that the last day of any period calculated by reference to calendar days in Section 1.9, 1.12(a)(ii), 2.2(a), 2.2(g), 3.2(d), 3.4, 4.2(d)(ii), 4.2(g) or 9.7 or in any other

Section of the Definitions falls on a day that is not a Business Day, such last day shall be subject to adjustment in accordance with the applicable Business Day Convention.

**Section 2.12. Floating Rate Payer.** "Floating Rate Payer" means, in respect of a Credit Derivative Transaction, the party specified as such in the related Confirmation.

**Section 2.13. Floating Rate Payer Calculation Amount.** "Floating Rate Payer Calculation Amount" means the amount specified as such in the related Confirmation.

**Section 2.14. Obligation.** "Obligation" means (a) any obligation of a Reference Entity (either directly or as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the related Confirmation, as provider of any Qualifying Guarantee) determined pursuant to the method described in Section 2.19 (but excluding any Excluded Obligation), (b) each Reference Obligation, unless specified in the related Confirmation as an Excluded Obligation, and (c) any other obligation of a Reference Entity specified as such in the related Confirmation.

**Section 2.15. Deliverable Obligation.** "Deliverable Obligation" means, subject to Sections 2.32(a) and 2.33(a):

(a) any obligation of a Reference Entity (either directly or as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the related Confirmation, as provider of any Qualifying Guarantee) determined pursuant to the method described in Section 2.20 (but excluding any Excluded Deliverable Obligation) that (i) is payable in an amount equal to its outstanding principal balance or Due and Payable Amount, as applicable, (ii) is not subject to any counterclaim, defense (other than a counterclaim or defense based on the factors set forth in Section 4.1(a)-(d)) or right of set off by or of a Reference Entity or any applicable Underlying Obligor and (iii) in the case of a Qualifying Guarantee other than a Qualifying Affiliate Guarantee, is capable, at the Delivery Date, of immediate assertion or demand by or on behalf of the holder or holders against the Reference Entity for an amount at least equal to the outstanding principal balance or Due and Payable Amount being Delivered apart from the giving of any notice of nonpayment or similar procedural requirement, it being understood that acceleration of an Underlying Obligation shall not be considered a procedural requirement;

(b) subject to the second paragraph of Section 2.20(b)(i), each Reference Obligation, unless specified in the related Confirmation as an Excluded Deliverable Obligation;

(c) solely in relation to a Restructuring Credit Event applicable to a Sovereign Reference Entity, any Sovereign Restructured Deliverable Obligation (but excluding any Excluded Deliverable Obligation) that (i) is payable in an amount equal to its outstanding principal balance or Due and Payable Amount, as applicable, (ii) is not subject to any counterclaim, defense (other than a counterclaim or defense based on the factors set forth in Section 4.1(a)-(d)) or right of set off by or of a Reference Entity or, as applicable, an Underlying Obligor and (iii) in the case of a Qualifying Guarantee other than a Qualifying Affiliate Guarantee, is capable, at the Delivery Date, of immediate assertion or demand by or on behalf of the holder or holders against the Reference Entity for an amount at least equal to the outstanding principal balance or Due and Payable Amount being Delivered apart from the giving of any notice of nonpayment or similar procedural

requirement, it being understood that acceleration of an Underlying Obligation shall not be considered a procedural requirement; and

(d) any other obligation of a Reference Entity specified as such in the related Confirmation.

**Section 2.16. Sovereign Restructured Deliverable Obligation.** "Sovereign Restructured Deliverable Obligation" means an Obligation of a Sovereign Reference Entity (a) in respect of which a Restructuring that is the subject of the relevant Credit Event Notice has occurred and (b) described by the Deliverable Obligation Category specified in the related Confirmation, and, subject to Section 2.21(c), having each of the Deliverable Obligation Characteristics, if any, specified in the related Confirmation, in each case, immediately preceding the date on which such Restructuring is legally effective in accordance with the terms of the documentation governing such Restructuring without regard to whether the Obligation would satisfy such Deliverable Obligation Category or Deliverable Obligation Characteristics after such Restructuring.

**Section 2.17. Excluded Obligation.** "Excluded Obligation" means any obligation of a Reference Entity specified as such or of a type described in the related Confirmation.

**Section 2.18. Excluded Deliverable Obligation.** "Excluded Deliverable Obligation" means any obligation of a Reference Entity specified as such or of a type described in the related Confirmation.

**Section 2.19. Method for Determining Obligations.** For purposes of Section 2.14(a), the term "Obligation" may be defined as each obligation of each Reference Entity described by the Obligation Category specified in the related Confirmation and having each of the Obligation Characteristics, if any, specified in the related Confirmation, in each case, as of the date of the event which constitutes the Credit Event which is the subject of the Credit Event Notice. The following terms shall have the following meanings:

(a) "Obligation Category" means Payment, Borrowed Money, Reference Obligations Only, Bond, Loan, or Bond or Loan, only one of which shall be specified in the related Confirmation, and:

(i) "Payment" means any obligation (whether present or future, contingent or otherwise) for the payment or repayment of money, including, without limitation, Borrowed Money;

(ii) "Borrowed Money" means any obligation (excluding an obligation under a revolving credit arrangement for which there are no outstanding, unpaid drawings in respect of principal) for the payment or repayment of borrowed money (which term shall include, without limitation, deposits and reimbursement obligations arising from drawings pursuant to letters of credit);

(iii) "Reference Obligations Only" means any obligation that is a Reference Obligation and no Obligation Characteristics shall be applicable to Reference Obligations Only;

(iv) "Bond" means any obligation of a type included in the "Borrowed Money" Obligation Category that is in the form of, or represented by, a bond, note (other than notes delivered pursuant to Loans), certificated debt security or other debt security and shall not include any other type of Borrowed Money;

(v) "Loan" means any obligation of a type included in the "Borrowed Money" Obligation Category that is documented by a term loan agreement, revolving loan agreement or other similar credit agreement and shall not include any other type of Borrowed Money; and

(vi) "Bond or Loan" means any obligation that is either a Bond or a Loan.

(b) "Obligation Characteristics" means any one or more of Not Subordinated, Specified Currency, Not Sovereign Lender, Not Domestic Currency, Not Domestic Law, Listed and Not Domestic Issuance, and:

(i) (A) "Not Subordinated" means an obligation that is not Subordinated to (i) the most senior Reference Obligation in priority of payment or (ii) if no Reference Obligation is specified in the related Confirmation, any unsubordinated Borrowed Money obligation of the Reference Entity. For purposes of determining whether an obligation satisfies the "Not Subordinated" Obligation Characteristic or Deliverable Obligation Characteristic, the ranking in priority of payment of each Reference Obligation shall be determined as of the later of (1) the Trade Date specified in the related Confirmation and (2) the date on which such Reference Obligation was issued or incurred and shall not reflect any change to such ranking in priority of payment after such later date.

(B) "Subordination" means, with respect to an obligation (the "Subordinated Obligation") and another obligation of the Reference Entity to which such obligation is being compared (the "Senior Obligation"), a contractual, trust or similar arrangement providing that (i) upon the liquidation, dissolution, reorganization or winding up of the Reference Entity, claims of the holders of the Senior Obligation will be satisfied prior to the claims of the holders of the Subordinated Obligation or (ii) the holders of the Subordinated Obligation will not be entitled to receive or retain payments in respect of their claims against the Reference Entity at any time that the Reference Entity is in payment arrears or is otherwise in default under the Senior Obligation. "Subordinated" will be construed accordingly. For purposes of determining whether Subordination exists or whether an obligation is Subordinated with respect to another obligation to which it is being compared, the existence of preferred creditors arising by operation of law or of collateral, credit support or other credit enhancement arrangements shall not be taken into account, except that, notwithstanding the foregoing, priorities arising by operation of law shall be taken into account where the Reference Entity is a Sovereign.

(ii) "Specified Currency" means an obligation that is payable in the currency or currencies specified as such in the related Confirmation (or, if Specified Currency is specified in a Confirmation and no currency is so specified, any of the lawful currencies of Canada, Japan, Switzerland, the United Kingdom and the United States of America and the euro and any successor currency to any of the aforementioned currencies, which currencies shall be referred to collectively in a Confirmation as the "Standard Specified Currencies");

(iii) "Not Sovereign Lender" means any obligation that is not primarily owed to a Sovereign or Supranational Organization, including, without limitation, obligations generally referred to as "Paris Club debt";

(iv) "Not Domestic Currency" means any obligation that is payable in any currency other than the Domestic Currency;

(v) "Not Domestic Law" means any obligation that is not governed by the laws of (A) the relevant Reference Entity, if such Reference Entity is a Sovereign, or (B) the jurisdiction of organization of the relevant Reference Entity, if such Reference Entity is not a Sovereign;

(vi) "Listed" means an obligation that is quoted, listed or ordinarily purchased and sold on an exchange; and

(vii) "Not Domestic Issuance" means any obligation other than an obligation that was, at the time the relevant obligation was issued (or reissued, as the case may be) or incurred, intended to be offered for sale primarily in the domestic market of the relevant Reference Entity. Any obligation that is registered or qualified for sale outside the domestic market of the relevant Reference Entity (regardless of whether such obligation is also registered or qualified for sale within the domestic market of the relevant Reference Entity) shall be deemed not to be intended for sale primarily in the domestic market of the Reference Entity.

**Section 2.20. Method for Determining Deliverable Obligations.** For purposes of Section 2.15, the term "Deliverable Obligation" may be defined as each obligation of each Reference Entity described by the Deliverable Obligation Category specified in the related Confirmation, and, subject to Section 2.21(c), having each of the Deliverable Obligation Characteristics, if any, specified in the related Confirmation, in each case, as of the Delivery Date. The following terms shall have the following meanings:

(a) "Deliverable Obligation Category" means one of Payment, Borrowed Money, Reference Obligations Only, Bond, Loan, or Bond or Loan (each as defined in Section 2.19(a), except that, for the purpose of determining Deliverable Obligations, Section 2.19(a)(iii) (Reference Obligations Only) shall be amended to state that no Deliverable Obligation Characteristics shall be applicable to Reference Obligations Only).

(b) "Deliverable Obligation Characteristics" means any one or more of Not Subordinated, Specified Currency, Not Sovereign Lender, Not Domestic Currency, Not Domestic Law, Listed, Not Contingent, Not Domestic Issuance, Assignable Loan, Consent Required Loan, Direct Loan Participation, Transferable, Maximum Maturity, Accelerated or Matured and Not Bearer, and:

(i) "Not Contingent" means any obligation having as of the Delivery Date and all times thereafter an outstanding principal balance or, in the case of obligations that are not Borrowed Money, a Due and Payable Amount, that pursuant to the terms of such obligation may not be reduced as a result of the occurrence or nonoccurrence of an event or circumstance (other than payment). A Convertible Obligation, an Exchangeable Obligation and an Accreting Obligation shall satisfy the Not Contingent Deliverable Obligation Characteristic if such Convertible Obligation, Exchangeable Obligation or Accreting Obligation otherwise meets the requirements of the preceding sentence so long as, in the case of a Convertible Obligation or an Exchangeable Obligation, the right (A) to convert or exchange such obligation or (B) to require the issuer to purchase or redeem such obligation (if the issuer has exercised or may exercise the right to pay the purchase or redemption price, in whole or in part, in Equity Securities) has not been exercised (or such exercise has been effectively rescinded) on or before the Delivery Date.

If a Reference Obligation is a Convertible Obligation or an Exchangeable Obligation, then such Reference Obligation may be included as a Deliverable Obligation only if the rights referred to in clauses (A) and (B) of this Section 2.20(b)(i) have not been exercised (or such exercise has been effectively rescinded) on or before the Delivery Date.

(ii) "Assignable Loan" means a Loan that is capable of being assigned or novated to, at a minimum, commercial banks or financial institutions (irrespective of their jurisdiction or organization) that are not then a lender or a member of the relevant lending syndicate, without the consent of the relevant Reference Entity or the guarantor, if any, of such Loan (or the consent of the applicable borrower if a Reference Entity is guaranteeing such Loan) or any agent;

(iii) "Consent Required Loan" means a Loan that is capable of being assigned or novated with the consent of the relevant Reference Entity or the guarantor, if any, of such Loan (or the consent of the relevant borrower if a Reference Entity is guaranteeing such Loan) or any agent;

(iv) "Direct Loan Participation" means a Loan in respect of which, pursuant to a participation agreement, Buyer is capable of creating, or procuring the creation of, a contractual right in favor of Seller that provides Seller with recourse to the participation seller for a specified share in any payments due under the relevant Loan which are received by such participation seller, any such agreement to be entered into between Seller and either (A) Buyer (to the extent Buyer is then a lender or a member of the relevant lending syndicate), or (B) a Qualifying Participation Seller (if any) (to the extent such Qualifying Participation Seller is then a lender or a member of the relevant lending syndicate);

(v) "Transferable" means an obligation that is transferable to institutional investors without any contractual, statutory or regulatory restriction, provided that none of the following shall be considered contractual, statutory or regulatory restrictions:

(A) contractual, statutory or regulatory restrictions that provide for eligibility for resale pursuant to Rule 144A or Regulation S promulgated under the United States Securities Act of 1933, as amended (and any contractual, statutory or regulatory restrictions promulgated under the laws of any jurisdiction having a similar effect in relation to the eligibility for resale of an obligation); or

(B) restrictions on permitted investments such as statutory or regulatory investment restrictions on insurance companies and pension funds;

(vi) "Maximum Maturity" means an obligation that has a remaining maturity from the Physical Settlement Date of not greater than the period specified in the related Confirmation;

(vii) "Accelerated or Matured" means an obligation under which the total amount owed, whether at maturity, by reason of acceleration, upon termination or otherwise (other than amounts in respect of default interest, indemnities, tax gross-ups and other similar amounts), is, or on or prior to the Delivery Date will be, due and payable in full in accordance with the terms of such obligation, or would have been but for, and without regard to, any limitation imposed under any applicable insolvency laws; and

(viii) "Not Bearer" means any obligation that is not a bearer instrument unless interests with respect to such bearer instrument are cleared via the Euroclear system, Clearstream International or any other internationally recognized clearing system.

**Section 2.21. Interpretation of Provisions.** Unless expressly agreed to by the parties by means of a statement in a related Confirmation that this Section 2.21 is not applicable to a Credit Derivative Transaction:

(a) If the Obligation Characteristic "Listed" is specified in a Confirmation, the Confirmation shall be construed as though Listed had been specified as an Obligation Characteristic only with respect to Bonds and shall only be relevant if Bonds are covered by the selected Obligation Category;

(b) If (i) either of the Deliverable Obligation Characteristics "Listed" or "Not Bearer" is specified in a Confirmation, the Confirmation shall be construed as though such Deliverable Obligation Characteristic had been specified as a Deliverable Obligation Characteristic only with respect to Bonds and shall only be relevant if Bonds are covered by the selected Deliverable Obligation Category; (ii) the Deliverable Obligation Characteristic "Transferable" is

specified in a Confirmation, the Confirmation shall be construed as though such Deliverable Obligation Characteristic had been specified as a Deliverable Obligation Characteristic only with respect to Deliverable Obligations that are not Loans (and shall only be relevant to the extent that obligations other than Loans are covered by the selected Deliverable Obligation Category); or (iii) any of the Deliverable Obligation Characteristics "Assignable Loan", "Consent Required Loan" or "Direct Loan Participation" is specified in a Confirmation, the Confirmation shall be construed as though such Deliverable Obligation Characteristic had been specified as a Deliverable Obligation Characteristic only with respect to Loans and shall only be relevant if Loans are covered by the selected Deliverable Obligation Category;

(c) If any of Payment, Borrowed Money, Loan or Bond or Loan is specified as the Deliverable Obligation Category and more than one of Assignable Loan, Consent Required Loan and Direct Loan Participation are specified as Deliverable Obligation Characteristics, the Deliverable Obligations may include any Loan that satisfies any one of such Deliverable Obligation Characteristics specified and need not satisfy all such Deliverable Obligation Characteristics; and

(d) In the event that an Obligation or a Deliverable Obligation is a Qualifying Guarantee, the following will apply:

(i) For purposes of the application of the Obligation Category or the Deliverable Obligation Category, the Qualifying Guarantee shall be deemed to satisfy the same category or categories as those that describe the Underlying Obligation.

(ii) For purposes of the application of the Obligation Characteristics or the Deliverable Obligation Characteristics, both the Qualifying Guarantee and the Underlying Obligation must satisfy on the relevant date each of the applicable Obligation Characteristics or the Deliverable Obligation Characteristics, if any, specified in the related Confirmation from the following list: Specified Currency, Not Sovereign Lender, Not Domestic Currency and Not Domestic Law. For these purposes, unless otherwise specified in the related Confirmation, (A) the lawful currency of any of Canada, Japan, Switzerland, the United Kingdom or the United States of America or the euro shall not be a Domestic Currency and (B) the laws of England and the laws of the State of New York shall not be a Domestic Law.

(iii) For purposes of the application of the Obligation Characteristics or the Deliverable Obligation Characteristics, only the Qualifying Guarantee must satisfy on the relevant date the Obligation Characteristic or the Deliverable Obligation Characteristic of Not Subordinated, if specified in the related Confirmation.

(iv) For purposes of the application of the Obligation Characteristics or the Deliverable Obligation Characteristics, only the Underlying Obligation must satisfy on the relevant date each of the applicable Obligation Characteristics or the Deliverable Obligation Characteristics, if any, specified in the related Confirmation from the following list: Listed, Not Contingent, Not Domestic Issuance, Assignable



Loan, Consent Required Loan, Direct Loan Participation, Transferable, Maximum Maturity, Accelerated or Matured and Not Bearer.

(v) For purposes of the application of the Obligation Characteristics or the Deliverable Obligation Characteristics to an Underlying Obligation, references to the Reference Entity shall be deemed to refer to the Underlying Obligor.

(vi) The terms "outstanding principal balance" and "Due and Payable Amount" (as they are used in various other Sections, including without limitation, Sections 9.8(a) and 9.8(g)), when used in connection with Qualifying Guarantees are to be interpreted to be the then "outstanding principal balance" or "Due and Payable Amount", as applicable, of the Underlying Obligation which is supported by a Qualifying Guarantee.

**Section 2.22. Qualifying Participation Seller.** "Qualifying Participation Seller" means any participation seller that meets the requirements specified in the related Confirmation. If no such requirements are specified, there shall be no Qualifying Participation Seller.

**Section 2.23. Qualifying Guarantee.** "Qualifying Guarantee" means an arrangement evidenced by a written instrument pursuant to which a Reference Entity irrevocably agrees (by guarantee of payment or equivalent legal arrangement) to pay all amounts due under an obligation (the "Underlying Obligation") for which another party is the obligor (the "Underlying Obligor") and that is not at the time of the Credit Event Subordinated to any unsubordinated Borrowed Money obligation of the Underlying Obligor (with references in the definition of Subordination to the Reference Entity deemed to refer to the Underlying Obligor). Qualifying Guarantees shall exclude any arrangement (i) structured as a surety bond, financial guarantee insurance policy, letter of credit or equivalent legal arrangement or (ii) pursuant to the terms of which the payment obligations of the Reference Entity can be discharged, reduced, assigned or otherwise altered as a result of the occurrence or non-occurrence of an event or circumstance (other than payment). The benefit of a Qualifying Guarantee must be capable of being Delivered together with the Delivery of the Underlying Obligation.

**Section 2.24. Qualifying Affiliate Guarantee.** "Qualifying Affiliate Guarantee" means a Qualifying Guarantee provided by a Reference Entity in respect of an Underlying Obligation of a Downstream Affiliate of that Reference Entity.

**Section 2.25. Downstream Affiliate and Voting Shares.** (a) "Downstream Affiliate" means an entity, at the date of the event giving rise to the Credit Event which is the subject of the Credit Event Notice, the Delivery Date or the time of identification of a Substitute Reference Obligation (as applicable), whose outstanding Voting Shares are more than 50 percent owned, directly or indirectly, by the Reference Entity.

(b) "Voting Shares" shall mean those shares or other interests that have the power to elect the board of directors or similar governing body of an entity.

**Section 2.26. Sovereign.** "Sovereign" means any state, political subdivision or government, or any agency, instrumentality, ministry, department or other authority (including, without limiting the foregoing, the central bank) thereof.

**Section 2.27. Sovereign Agency.** "Sovereign Agency" means any agency, instrumentality, ministry, department or other authority (including, without limiting the foregoing, the central bank) of a Sovereign.

**Section 2.28. Supranational Organization.** "Supranational Organization" means any entity or organization established by treaty or other arrangement between two or more Sovereigns or the Sovereign Agencies of two or more Sovereigns and includes, without limiting the foregoing, the International Monetary Fund, European Central Bank, International Bank for Reconstruction and Development and European Bank for Reconstruction and Development.

**Section 2.29. Domestic Currency.** "Domestic Currency" means the currency specified as such in the related Confirmation and any successor currency. If no currency is so specified, the Domestic Currency shall be the lawful currency and any successor currency of (a) the relevant Reference Entity, if the Reference Entity is a Sovereign, or (b) the jurisdiction in which the relevant Reference Entity is organized, if the Reference Entity is not a Sovereign. In no event shall Domestic Currency include any successor currency if such successor currency is the lawful currency of any of Canada, Japan, Switzerland, the United Kingdom or the United States of America or the euro (or any successor currency to any such currency).

**Section 2.30. Substitute Reference Obligation.** "Substitute Reference Obligation" means one or more obligations of the Reference Entity (either directly or as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the related Confirmation, as provider of any Qualifying Guarantee) that will replace one or more Reference Obligations, identified by the Calculation Agent in accordance with the following procedures:

(a) In the event that (i) a Reference Obligation is redeemed in whole or (ii) in the opinion of the Calculation Agent (A) the aggregate amounts due under any Reference Obligation have been materially reduced by redemption or otherwise (other than due to any scheduled redemption, amortization or prepayments), (B) any Reference Obligation is an Underlying Obligation with a Qualifying Guarantee of a Reference Entity and, other than due to the existence or occurrence of a Credit Event, the Qualifying Guarantee is no longer a valid and binding obligation of such Reference Entity enforceable in accordance with its terms, or (C) for any other reason, other than due to the existence or occurrence of a Credit Event, any Reference Obligation is no longer an obligation of a Reference Entity, the Calculation Agent shall (after consultation with the parties) identify one or more Obligations to replace such Reference Obligation.

(b) Any Substitute Reference Obligation or Substitute Reference Obligations shall be an Obligation that (1) ranks *pari passu* (or, if no such Obligation exists, then, at the Buyer's option, an Obligation that ranks senior) in priority of payment with such Reference Obligation (with the ranking in priority of payment of such Reference Obligation being determined as of the later of (A) the Trade Date specified in the related Confirmation and (B) the date on which such Reference Obligation was issued or incurred and not reflecting any change to such ranking in priority of payment after such later date), (2) preserves the economic equivalent, as closely as practicable as

determined by the Calculation Agent in consultation with the parties, of the delivery and payment obligations of the parties to the Credit Derivative Transaction and (3) is an obligation of a Reference Entity (either directly or as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the related Confirmation, as provider of a Qualifying Guarantee). The Substitute Reference Obligation or Substitute Reference Obligations identified by the Calculation Agent shall, without further action, replace such Reference Obligation or Reference Obligations.

(c) If more than one specific Reference Obligation is identified as a Reference Obligation in relation to a Credit Derivative Transaction, any of the events set forth under Section 2.30(a) has occurred with respect to one or more but not all of the Reference Obligations, and the Calculation Agent determines (after consultation with the parties) that no Substitute Reference Obligation is available for one or more of such Reference Obligations, each Reference Obligation for which no Substitute Reference Obligation is available shall cease to be a Reference Obligation.

(d) If more than one specific Reference Obligation is identified as a Reference Obligation in relation to a Credit Derivative Transaction, any of the events set forth under Section 2.30(a) has occurred with respect to all of the Reference Obligations, and the Calculation Agent determines (after consultation with the parties) that at least one Substitute Reference Obligation is available for any such Reference Obligation, then each such Reference Obligation shall be replaced by a Substitute Reference Obligation and each Reference Obligation for which no Substitute Reference Obligation is available will cease to be a Reference Obligation.

(e) If (i) more than one specific Reference Obligation is identified as a Reference Obligation in relation to a Credit Derivative Transaction, any of the events set forth under Section 2.30(a) has occurred with respect to all of the Reference Obligations and the Calculation Agent determines (after consultation with the parties) that no Substitute Reference Obligation is available for any of the Reference Obligations, or (ii) only one specific Reference Obligation is identified as a Reference Obligation in relation to a Credit Derivative Transaction, any of the events set forth under Section 2.30(a) has occurred with respect to such Reference Obligation and the Calculation Agent determines (after consultation with the parties) that no Substitute Reference Obligation is available for that Reference Obligation, then the Calculation Agent shall continue to attempt to identify a Substitute Reference Obligation until the latest of the Scheduled Termination Date, the Grace Period Extension Date (if any) and the Repudiation/Moratorium Evaluation Date (if any). If (i) either Cash Settlement is applicable and the Cash Settlement Amount is determined by reference to a Reference Obligation or Physical Settlement is applicable and the Reference Obligation is the only Deliverable Obligation and (ii) on or prior to the latest of the Scheduled Termination Date, the Grace Period Extension Date or the Repudiation/Moratorium Evaluation Date, a Substitute Reference Obligation has not been identified, the parties' obligations to each other under such Credit Derivative Transaction shall cease as of the latest of the Scheduled Termination Date, the Grace Period Extension Date or the Repudiation/Moratorium Evaluation Date.

(f) For purposes of identification of a Reference Obligation, any change in the Reference Obligation's CUSIP or ISIN number or other similar identifier will not, in and of itself, convert such Reference Obligation into a different Obligation.

**Section 2.31. Merger of Reference Entity and Seller.** In the event that Seller or a Reference Entity consolidates or amalgamates with, or merges into, or transfers all or substantially all its assets to, the Reference Entity or the Seller, as applicable, or Seller and a Reference Entity become Affiliates, an Additional Termination Event under the 2002 ISDA Master Agreement will be deemed to have occurred with Seller as the sole Affected Party, with each Credit Derivative Transaction involving such Reference Entity as the Affected Transactions and Close-out Amount as applicable (irrespective of the payment measure specified by the parties in any master agreement between them) and each such Credit Derivative Transaction will be terminated in accordance with any applicable provisions set forth in the 2002 ISDA Master Agreement.

**Section 2.32. Restructuring Maturity Limitation and Fully Transferable Obligation.**

(a) If Physical Settlement and "Restructuring Maturity Limitation and Fully Transferable Obligation Applicable" are specified in a Confirmation and Restructuring is the only Credit Event specified in a Credit Event Notice delivered by Buyer, then a Deliverable Obligation may be specified (or deemed specified pursuant to Section 9.10) in the Notice of Physical Settlement only if it (i) is a Fully Transferable Obligation and (ii) has a final maturity date not later than the Restructuring Maturity Limitation Date.

(b) "Fully Transferable Obligation" means a Deliverable Obligation that is either Transferable, in the case of Bonds, or capable of being assigned or novated to all Eligible Transferees without the consent of any person being required, in the case of any Deliverable Obligation other than Bonds. Any requirement that notification of novation, assignment or transfer of a Deliverable Obligation be provided to a trustee, fiscal agent, administrative agent, clearing agent or paying agent for a Deliverable Obligation shall not be considered to be a requirement for consent for purposes of this Section 2.32(b).

For purposes of determining whether a Deliverable Obligation satisfies the requirements of the definition of Fully Transferable Obligation, such determination shall be made as of the Delivery Date for the Deliverable Obligation, taking into account only the terms of the Deliverable Obligation and any related transfer or consent documents which have been obtained by Buyer.

(c) "Restructuring Maturity Limitation Date" means the date that is the earlier of (x) thirty months following the Restructuring Date and (y) the latest final maturity date of any Restructured Bond or Loan, provided, however, that under no circumstances shall the Restructuring Maturity Limitation Date be earlier than the Scheduled Termination Date or later than thirty months following the Scheduled Termination Date and if it is, it shall be deemed to be the Scheduled Termination Date or thirty months following the Scheduled Termination Date, as the case may be.

(d) "Restructuring Date" means, with respect to a Restructured Bond or Loan, the date on which a Restructuring is legally effective in accordance with the terms of the documentation governing such Restructuring.

(e) "Restructured Bond or Loan" means an Obligation which is a Bond or Loan and in respect of which a Restructuring that is the subject of a Credit Event Notice has occurred.

(f) "Eligible Transferee" means each of the following:

- (i)
  - (A) any bank or other financial institution;
  - (B) an insurance or reinsurance company;
  - (C) a mutual fund, unit trust or similar collective investment vehicle (other than an entity specified in clause (iii)(A) below); and
  - (D) a registered or licensed broker or dealer (other than a natural person or proprietorship);

provided, however, in each case that such entity has total assets of at least USD 500,000,000.

- (ii) an Affiliate of an entity specified in the preceding clause (i);
- (iii) each of a corporation, partnership, proprietorship, organization, trust or other entity

- (A) that is an investment vehicle (including, without limitation, any hedge fund, issuer of collateralized debt obligations, commercial paper conduit or other special purpose vehicle) that (1) has total assets of at least USD 100,000,000 or (2) is one of a group of investment vehicles under common control or management having, in the aggregate, total assets of at least USD 100,000,000;

- (B) that has total assets of at least USD 500,000,000; or

- (C) the obligations of which under an agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support or other agreement by an entity described in clauses (i), (ii), (iii)(B) or (iv) of this Section 2.32(f); and

- (iv) a Sovereign, Sovereign Agency or Supranational Organization.

All references in this Section 2.32(f) to USD include equivalent amounts in other currencies.

**Section 2.33. Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation.**

(a) If Physical Settlement and "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" are specified in a Confirmation and Restructuring is the only Credit Event specified in a Credit Event Notice delivered by Buyer, then a Deliverable Obligation may be specified (or deemed specified pursuant to Section 9.10) in the

Notice of Physical Settlement only if it (i) is a Conditionally Transferable Obligation and (ii) has a final maturity date not later than the applicable Modified Restructuring Maturity Limitation Date.

(b) "Conditionally Transferable Obligation" means a Deliverable Obligation that is either Transferable, in the case of Bonds, or capable of being assigned or novated to all Modified Eligible Transferees without the consent of any person being required, in the case of any Deliverable Obligation other than Bonds, provided, however, that a Deliverable Obligation other than Bonds will be a Conditionally Transferable Obligation notwithstanding that consent of the Reference Entity or the guarantor, if any, of a Deliverable Obligation other than Bonds (or the consent of the relevant obligor if a Reference Entity is guaranteeing such Deliverable Obligation) or any agent is required for such novation, assignment or transfer so long as the terms of such Deliverable Obligation provide that such consent may not be unreasonably withheld or delayed. Any requirement that notification of novation, assignment or transfer of a Deliverable Obligation be provided to a trustee, fiscal agent, administrative agent, clearing agent or paying agent for a Deliverable Obligation shall not be considered to be a requirement for consent for purposes of this Section 2.33(b).

(i) Where Modified Restructuring Maturity Limitation under this Section 2.33 applies and a Deliverable Obligation is a Conditionally Transferable Obligation with respect to which consent is required to novate, assign or transfer, then if the requisite consent is refused (whether or not a reason is given for such refusal and, where a reason is given for such refusal, regardless of that reason), or is not received by the Physical Settlement Date (in which case it shall be deemed to have been refused), Buyer shall promptly notify Seller of such refusal (or deemed refusal) and:

(A) Section 9.2(c)(iv) shall apply with respect to Seller as the "designator", provided, however, that the designee need not be an Affiliate of Seller; and

(B) if Seller does not designate a third party that takes Delivery on or prior to the Alternative Procedure Start Date, then Section 9.10 shall apply.

(ii) For purposes of determining whether a Deliverable Obligation satisfies the requirements of the definition of Conditionally Transferable Obligation, such determination shall be made as of the Delivery Date for the Deliverable Obligation, taking into account only the terms of the Deliverable Obligation and any related transfer or consent documents which have been obtained by Buyer.

(c) "Modified Restructuring Maturity Limitation Date" means, with respect to a Deliverable Obligation, the date that is the later of (x) the Scheduled Termination Date and (y) 60 months following the Restructuring Date in the case of a Restructured Bond or Loan, or 30 months following the Restructuring Date in the case of all other Deliverable Obligations.

(d) "Restructuring Date" means, with respect to a Restructured Bond or Loan, the date on which a Restructuring is legally effective in accordance with the terms of the documentation governing such Restructuring.

(e) "Restructured Bond or Loan" means an Obligation which is a Bond or Loan and in respect of which a Restructuring that is the subject of a Credit Event Notice has occurred.

(f) "Modified Eligible Transferee" means any bank, financial institution or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities and other financial assets.

## ARTICLE III

### CONDITIONS TO SETTLEMENT

**Section 3.1. Settlement.** Upon the occurrence of a Credit Event applicable to a Credit Derivative Transaction and satisfaction of all of the Conditions to Settlement with respect to such Credit Derivative Transaction, the parties shall perform their respective obligations in accordance with the applicable Settlement Method.

#### **Section 3.2. Conditions to Settlement.**

(a) "Conditions to Settlement" means (i) with respect to a Credit Derivative Transaction to which Cash Settlement is specified in the related Confirmation, Credit Event Notice and, if specified as applicable in the related Confirmation, Notice of Publicly Available Information and (ii) with respect to a Credit Derivative Transaction to which Physical Settlement is specified in the related Confirmation, Credit Event Notice and Notice of Physical Settlement, and, if specified as applicable in the related Confirmation, Notice of Publicly Available Information.

(b) Credit Event Notice. The Credit Event Notice Condition to Settlement may be satisfied as follows:

(i) if "Buyer" is specified in the related Confirmation as the Notifying Party, by the delivery of a Credit Event Notice by Buyer to Seller that is effective during the Notice Delivery Period; and

(ii) if "Buyer or Seller" is specified in the related Confirmation as Notifying Parties or neither party is specified as such, by the delivery of a Credit Event Notice by Buyer or Seller to the other party that is effective during the Notice Delivery Period.

(c) Notice of Publicly Available Information. The Notice of Publicly Available Information Condition to Settlement is satisfied by the delivery of a Notice of Publicly Available Information by the party delivering the Credit Event Notice to the other party that is effective during the Notice Delivery Period.

(d) Notice of Physical Settlement. The Notice of Physical Settlement Condition to Settlement is satisfied by the delivery by Buyer of a Notice of Physical Settlement to Seller that is effective no later than thirty calendar days after the Event Determination Date. For purposes of determining whether the Notice of Physical Settlement Condition to Settlement has been satisfied, the effective date of delivery of the Notice of Physical Settlement (whether or not subsequently changed) shall be used.

(e) Notifying Party. "Notifying Party" means, with respect to a Credit Derivative Transaction, each party specified as such in the related Confirmation or, if neither party is specified as such, Buyer or Seller.



**Section 3.3. Credit Event Notice.** "Credit Event Notice" means an irrevocable notice from a Notifying Party (which may be by telephone) to the other party that describes a Credit Event that occurred at or after 12:01 a.m., Greenwich Mean Time, on the Effective Date and at or prior to 11:59 p.m., Greenwich Mean Time, on the latest of:

- (a) the Scheduled Termination Date;
- (b) the Grace Period Extension Date if:
  - (i) Grace Period Extension is specified as applicable in the related Confirmation;
  - (ii) the Credit Event that is the subject of the Credit Event Notice is a Failure to Pay that occurs after the Scheduled Termination Date; and
  - (iii) the Potential Failure to Pay with respect to such Failure to Pay occurs at or prior to 11:59 p.m., Greenwich Mean Time, on the Scheduled Termination Date; and
- (c) the Repudiation/Moratorium Evaluation Date if:
  - (i) the Credit Event that is the subject of the Credit Event Notice is a Repudiation/Moratorium that occurs after the Scheduled Termination Date;
  - (ii) the Potential Repudiation/Moratorium with respect to such Repudiation/Moratorium occurs at or prior to 11:59 p.m., Greenwich Mean Time, on the Scheduled Termination Date; and
  - (iii) the Repudiation/Moratorium Extension Condition is satisfied,

unless the parties specify an alternative time in the related Confirmation.

A Credit Event Notice must contain a description in reasonable detail of the facts relevant to the determination that a Credit Event has occurred. The Credit Event that is the subject of the Credit Event Notice need not be continuing on the date the Credit Event Notice is effective. A Credit Event Notice shall be subject to the requirements regarding notices set forth in Section 1.10. A form of Credit Event Notice is set forth in Exhibit B.

**Section 3.4. Notice of Physical Settlement.** "Notice of Physical Settlement" means a notice from Buyer to Seller (which may be by telephone and which shall be subject to the requirements regarding notices set forth in Section 1.10) that (i) irrevocably confirms that Buyer will settle the Credit Derivative Transaction and require performance in accordance with the Physical Settlement Method and (ii) contains a detailed description of the Deliverable Obligations that Buyer will, subject to Section 9.2(c)(ii), Deliver to Seller, including the outstanding principal balance or Due and Payable Amount of each such Deliverable Obligation to be Delivered and, if available, the CUSIP or ISIN number (if such identifying number is not available, the rate and tenor of the Deliverable Obligation). Buyer may notify Seller (in the manner given as aforesaid) that

Buyer is changing one or more Deliverable Obligations to be Delivered (to the extent such Deliverable Obligation has not previously been Delivered) or the detailed description thereof, but each such notice must be effective on or prior to the Physical Settlement Date (determined without reference to any such change). Notwithstanding the foregoing, Buyer may correct any errors or inconsistencies in the detailed description of the Deliverable Obligations by notice to the Seller (given as aforesaid) prior to the relevant Delivery Date.

If an effective Notice of Physical Settlement is not delivered by Buyer on or before the thirtieth calendar day after the Event Determination Date (subject to adjustment in accordance with any specified Business Day Convention), such thirtieth calendar day shall be the Termination Date.

A form of Notice of Physical Settlement is set forth in Exhibit C.

**Section 3.5. Publicly Available Information.** "Publicly Available Information" means:

(a) information that reasonably confirms any of the facts relevant to the determination that the Credit Event or Potential Repudiation/Moratorium, as applicable, described in a Credit Event Notice or Repudiation/Moratorium Extension Notice has occurred and which (i) has been published in or on not less than the Specified Number of Public Sources, regardless of whether the reader or user thereof pays a fee to obtain such information; provided that, if either of the parties or any of their respective Affiliates is cited as the sole source of such information, then such information shall not be deemed to be Publicly Available Information unless such party or its Affiliate is acting in its capacity as trustee, fiscal agent, administrative agent, clearing agent or paying agent for an Obligation, (ii) is information received from or published by (A) a Reference Entity that is not a party to the relevant Credit Derivative Transaction (or a Sovereign Agency in respect of a Reference Entity which is a Sovereign) or (B) a trustee, fiscal agent, administrative agent, clearing agent or paying agent for an Obligation, (iii) is information contained in any petition or filing instituting a proceeding described in Section 4.2(d) against or by a Reference Entity or (iv) is information contained in any order, decree, notice or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body.

(b) In the event that with respect to a Credit Derivative Transaction in which the Buyer is (i) the sole source of information in its capacity as trustee, fiscal agent, administrative agent, clearing agent or paying agent for an Obligation and (ii) a holder of the Obligation with respect to which a Credit Event has occurred, the Buyer shall be required to deliver to Seller a certificate signed by a Managing Director (or other substantively equivalent title) of the Buyer, which shall certify the occurrence of a Credit Event with respect to a Reference Entity.

(c) In relation to any information of the type described in Section 3.5(a)(ii), (iii) and (iv), the party receiving such information may assume that such information has been disclosed to it without violating any law, agreement or understanding regarding the confidentiality of such information and that the party delivering such information has not taken any action or entered into any agreement or understanding with the Reference Entity or any Affiliate of the Reference Entity that would be breached by, or would prevent, the disclosure of such information to third parties.

(d) Publicly Available Information need not state (i) in relation to Section 2.25, the percentage of Voting Shares owned, directly or indirectly, by the Reference Entity and (ii) that such occurrence (A) has met the Payment Requirement or Default Requirement, (B) is the result of exceeding any applicable Grace Period or (C) has met the subjective criteria specified in certain Credit Events.

**Section 3.6. Notice of Publicly Available Information.** "Notice of Publicly Available Information" means an irrevocable notice from the party delivering the relevant Credit Event Notice or Repudiation/Moratorium Extension Notice (which may be by telephone) to the other party that cites Publicly Available Information confirming the occurrence of the Credit Event or Potential Repudiation/Moratorium, as applicable, described in the Credit Event Notice or Repudiation/Moratorium Extension Notice. In relation to a Repudiation/Moratorium Credit Event, the Notice of Publicly Available Information must cite Publicly Available Information confirming the occurrence of both clauses (i) and (ii) of the definition of Repudiation/Moratorium. The notice given must contain a copy, or a description in reasonable detail, of the relevant Publicly Available Information. A Notice of Publicly Available Information shall be subject to the requirements regarding notices set forth in Section 1.10. If Notice of Publicly Available Information is applicable to a Credit Derivative Transaction and a Credit Event Notice or Repudiation/Moratorium Extension Notice, as applicable, contains Publicly Available Information, such Credit Event Notice or Repudiation/Moratorium Extension Notice will also be deemed to be a Notice of Publicly Available Information. A form of Notice of Publicly Available Information (which may be a part of the form of Credit Event Notice or Repudiation/Moratorium Extension Notice) is set forth in Exhibits B and D.

**Section 3.7. Public Source.** "Public Source" means each source of Publicly Available Information specified as such in the related Confirmation (or, if a source is not so specified, each of Bloomberg Service, Dow Jones Telerate Service, Reuter Monitor Money Rates Services, Dow Jones News Wire, Wall Street Journal, New York Times, Nihon Keizai Shinbun, Asahi Shinbun, Yomiuri Shinbun, Financial Times, La Tribune, Les Echos and The Australian Financial Review (and successor publications), the main source(s) of business news in the country in which the Reference Entity is organized and any other internationally recognized published or electronically displayed news sources).

**Section 3.8. Specified Number.** "Specified Number" means the number of Public Sources specified in the related Confirmation (or, if a number is not so specified, two).

**Section 3.9. Credit Event Notice After Restructuring.** Unless specified otherwise in a Confirmation, upon the occurrence of a Restructuring Credit Event during the Term of the Credit Derivative Transaction:

(a) a Notifying Party may deliver multiple Credit Event Notices with respect to such Restructuring Credit Event, each such Credit Event Notice setting forth the amount of the Floating Rate Payer Calculation Amount to which such Credit Event Notice applies (the "Exercise Amount");

(b) if the Notifying Party has delivered a Credit Event Notice that specifies an Exercise Amount that is less than the then outstanding Floating Rate Payer Calculation Amount, the

rights and obligations of the parties shall, with effect from the date such Credit Event Notice is effective, be construed as if the parties had entered into two Credit Derivative Transactions, one of which has a Floating Rate Payer Calculation Amount equal to the Exercise Amount and, upon satisfaction of the Conditions to Settlement, will be settled in accordance with the applicable Settlement Method, and the other of which will have a Floating Rate Payer Calculation Amount equal to the Floating Rate Payer Calculation Amount outstanding prior to such Credit Event Notice minus the Exercise Amount and will continue in effect with such modifications required as determined by the Calculation Agent (in consultation with the parties) to preserve the economic effects of the two Credit Derivative Transactions considered in the aggregate;

(c) the Exercise Amount in connection with a Credit Event Notice describing a Credit Event other than a Restructuring must be equal to the then outstanding Floating Rate Payer Calculation Amount (and not a portion thereof); and

(d) the Exercise Amount in connection with a Credit Event Notice describing a Restructuring must be an amount that is at least 1,000,000 units of the currency (or, if Japanese Yen, 100,000,000 units) in which the Floating Rate Payer Calculation Amount is denominated or an integral multiple thereof or the entire then outstanding Floating Rate Payer Calculation Amount.

## ARTICLE IV

### CREDIT EVENTS

**Section 4.1. Credit Event.** "Credit Event" means, with respect to a Credit Derivative Transaction, one or more of Bankruptcy, Failure to Pay, Obligation Acceleration, Obligation Default, Repudiation/Moratorium or Restructuring, as specified in the related Confirmation. If an occurrence would otherwise constitute a Credit Event, such occurrence will constitute a Credit Event whether or not such occurrence arises directly or indirectly from, or is subject to a defense based upon: (a) any lack or alleged lack of authority or capacity of a Reference Entity to enter into any Obligation or, as applicable, an Underlying Obligor to enter into any Underlying Obligation, (b) any actual or alleged unenforceability, illegality, impossibility or invalidity with respect to any Obligation or, as applicable, any Underlying Obligation, however described, (c) any applicable law, order, regulation, decree or notice, however described, or the promulgation of, or any change in, the interpretation by any court, tribunal, regulatory authority or similar administrative or judicial body with competent or apparent jurisdiction of any applicable law, order, regulation, decree or notice, however described, or (d) the imposition of, or any change in, any exchange controls, capital restrictions or any other similar restrictions imposed by any monetary or other authority, however described.

**Section 4.2. Bankruptcy.** "Bankruptcy" means a Reference Entity (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails or admits in writing in a judicial, regulatory or administrative proceeding or filing its inability generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (ii) is not dismissed, discharged, stayed or restrained in each case within thirty calendar days of the institution or presentation thereof; (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty calendar days thereafter; or (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) (inclusive).

**Section 4.3. Obligation Acceleration.** "Obligation Acceleration" means one or more Obligations in an aggregate amount of not less than the Default Requirement have become due and payable before they would otherwise have been due and payable as a result of, or on the basis of, the occurrence of a default, event of default or other similar condition or event (however described),

other than a failure to make any required payment, in respect of a Reference Entity under one or more Obligations.

**Section 4.4. Obligation Default.** "Obligation Default" means one or more Obligations in an aggregate amount of not less than the Default Requirement have become capable of being declared due and payable before they would otherwise have been due and payable as a result of, or on the basis of, the occurrence of a default, event of default or other similar condition or event (however described), other than a failure to make any required payment, in respect of a Reference Entity under one or more Obligations.

**Section 4.5. Failure to Pay.** "Failure to Pay" means, after the expiration of any applicable Grace Period (after the satisfaction of any conditions precedent to the commencement of such Grace Period), the failure by a Reference Entity to make, when and where due, any payments in an aggregate amount of not less than the Payment Requirement under one or more Obligations, in accordance with the terms of such Obligations at the time of such failure.

**Section 4.6. Repudiation/Moratorium.**

(a) "Repudiation/Moratorium" means the occurrence of both of the following events: (i) an authorized officer of a Reference Entity or a Governmental Authority (x) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, one or more Obligations in an aggregate amount of not less than the Default Requirement or (y) declares or imposes a moratorium, standstill, roll-over or deferral, whether de facto or de jure, with respect to one or more Obligations in an aggregate amount of not less than the Default Requirement and (ii) a Failure to Pay, determined without regard to the Payment Requirement, or a Restructuring, determined without regard to the Default Requirement, with respect to any such Obligation occurs on or prior to the Repudiation/Moratorium Evaluation Date.

(b) Repudiation/Moratorium Evaluation Date. "Repudiation/Moratorium Evaluation Date" means, if a Potential Repudiation/Moratorium occurs on or prior to the Scheduled Termination Date, (i) if the Obligations to which such Potential Repudiation/Moratorium relates include Bonds, the date that is the later of (A) the date that is 60 days after the date of such Potential Repudiation/Moratorium and (B) the first payment date under any such Bond after the date of such Potential Repudiation/Moratorium (or, if later, the expiration date of any applicable Grace Period in respect of such payment date) and (ii) if the Obligations to which such Potential Repudiation/Moratorium relates do not include Bonds, the date that is 60 days after the date of such Potential Repudiation/Moratorium. If (i) the Repudiation/Moratorium Extension Condition is satisfied and (ii) an Event Determination Date in respect of that Repudiation/Moratorium does not occur during the Notice Delivery Period, the Repudiation/Moratorium Evaluation Date will be the Termination Date (even if a Repudiation/Moratorium occurs after the Scheduled Termination Date).

(c) Potential Repudiation/Moratorium. "Potential Repudiation/Moratorium" means the occurrence of an event described in clause (i) of the definition of Repudiation/Moratorium.

(d) Repudiation/Moratorium Extension Condition. The "Repudiation/Moratorium Extension Condition" is satisfied by the delivery of a

Repudiation/Moratorium Extension Notice and, if specified as applicable in the related Confirmation, Notice of Publicly Available Information by the Notifying Party to the other party that is effective during the period described in clause (a) of the definition of Notice Delivery Period.

(e) Repudiation/Moratorium Extension Notice. "Repudiation/Moratorium Extension Notice" means an irrevocable notice (which may be by telephone) from the Notifying Party to the other party that describes a Potential Repudiation/Moratorium that occurred on or after the Effective Date and on or prior to the Scheduled Termination Date. A Repudiation/Moratorium Extension Notice must contain a description in reasonable detail of the facts relevant to the determination that a Potential Repudiation/Moratorium has occurred and indicate the date of the occurrence. The Potential Repudiation/Moratorium that is the subject of the Repudiation/Moratorium Extension Notice need not be continuing on the date the Repudiation/Moratorium Extension Notice is effective. A Repudiation/Moratorium Extension Notice shall be subject to the requirements regarding notices set forth in Section 1.10. A form of Repudiation/Moratorium Extension Notice is set forth in Exhibit D.

#### **Section 4.7. Restructuring.**

(a) "Restructuring" means that, with respect to one or more Obligations and in relation to an aggregate amount of not less than the Default Requirement, any one or more of the following events occurs in a form that binds all holders of such Obligation, is agreed between the Reference Entity or a Governmental Authority and a sufficient number of holders of such Obligation to bind all holders of the Obligation or is announced (or otherwise decreed) by a Reference Entity or a Governmental Authority in a form that binds all holders of such Obligation, and such event is not expressly provided for under the terms of such Obligation in effect as of the later of the Trade Date and the date as of which such Obligation is issued or incurred:

(i) a reduction in the rate or amount of interest payable or the amount of scheduled interest accruals;

(ii) a reduction in the amount of principal or premium payable at maturity or at scheduled redemption dates;

(iii) a postponement or other deferral of a date or dates for either (A) the payment or accrual of interest or (B) the payment of principal or premium;

(iv) a change in the ranking in priority of payment of any Obligation, causing the Subordination of such Obligation to any other Obligation; or

(v) any change in the currency or composition of any payment of interest or principal to any currency which is not a Permitted Currency.

(A) "Permitted Currency" means (1) the legal tender of any Group of 7 country (or any country that becomes a member of the Group of 7 if such Group of 7 expands its membership) or (2) the legal tender of any country which, as of the date of such change, is a member of the Organization for Economic Cooperation and Development and has a local currency long-term

debt rating of either AAA or higher assigned to it by Standard & Poor's, a division of The McGraw-Hill Companies, Inc. or any successor to the rating business thereof, Aaa or higher assigned to it by Moody's Investors Service, Inc. or any successor to the rating business thereof or AAA or higher assigned to it by Fitch Ratings or any successor to the rating business thereof.

(b) Notwithstanding the provisions of Section 4.7(a), none of the following shall constitute a Restructuring:

(i) the payment in euros of interest or principal in relation to an Obligation denominated in a currency of a Member State of the European Union that adopts or has adopted the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union;

(ii) the occurrence of, agreement to or announcement of any of the events described in Section 4.7(a)(i) to (v) due to an administrative adjustment, accounting adjustment or tax adjustment or other technical adjustment occurring in the ordinary course of business; and

(iii) the occurrence of, agreement to or announcement of any of the events described in Section 4.7(a)(i) to (v) in circumstances where such event does not directly or indirectly result from a deterioration in the creditworthiness or financial condition of the Reference Entity.

(c) For purposes of Sections 4.7(a), 4.7(b) and 4.9, the term Obligation shall be deemed to include Underlying Obligations for which the Reference Entity is acting as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the related Confirmation, as provider of any Qualifying Guarantee. In the case of a Qualifying Guarantee and an Underlying Obligation, references to the Reference Entity in Section 4.7(a) shall be deemed to refer to the Underlying Obligor and the reference to the Reference Entity in Section 4.7(b) shall continue to refer to the Reference Entity.

#### **Section 4.8. Certain Definitions Relating to Credit Events.**

(a) **Default Requirement.** "Default Requirement" means the amount specified as such in the related Confirmation or its equivalent in the relevant Obligation Currency or, if Default Requirement is not so specified, USD 10,000,000 or its equivalent in the relevant Obligation Currency, in either case as of the occurrence of the relevant Credit Event.

(b) **Governmental Authority.** "Governmental Authority" means any de facto or de jure government (or any agency, instrumentality, ministry or department thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of a Reference Entity or of the jurisdiction of organization of a Reference Entity.

(c) **Obligation Currency.** "Obligation Currency" means the currency or currencies in which an Obligation is denominated.



(d) Payment Requirement. "Payment Requirement" means the amount specified as such in the related Confirmation or its equivalent in the relevant Obligation Currency or, if Payment Requirement is not so specified, USD 1,000,000 or its equivalent in the relevant Obligation Currency, in either case as of the occurrence of the relevant Failure to Pay or Potential Failure to Pay, as applicable.

**Section 4.9. Limitation on Obligations in Connection with Section 4.7.** Unless Multiple Holder Obligation is specified as not applicable in the related Confirmation, then, notwithstanding anything to the contrary in Section 4.7, the occurrence of, agreement to or announcement of any of the events described in Section 4.7(a)(i) to (v) shall not be a Restructuring unless the Obligation in respect of any such events is a Multiple Holder Obligation.

(a) "Multiple Holder Obligation" means an Obligation that (i) at the time of the event which constitutes a Restructuring Credit Event is held by more than three holders that are not Affiliates of each other and (ii) with respect to which a percentage of holders (determined pursuant to the terms of the Obligation as in effect on the date of such event) at least equal to sixty-six-and-two-thirds is required to consent to the event which constitutes a Restructuring Credit Event.

## ARTICLE V

### FIXED AMOUNTS

**Section 5.1. Calculation of Fixed Amount.** The Fixed Amount payable by a Fixed Rate Payer on a Fixed Rate Payer Payment Date will be:

(a) if an amount is specified in the related Confirmation as the Fixed Amount payable by the Fixed Rate Payer for that Fixed Rate Payer Payment Date or for the related Fixed Rate Payer Calculation Period, such amount; or

(b) if an amount is not specified in the related Confirmation as the Fixed Amount payable by the Fixed Rate Payer for that Fixed Rate Payer Payment Date or for the related Fixed Rate Payer Calculation Period, an amount calculated on a formula basis for that Fixed Rate Payer Payment Date or for the related Fixed Rate Payer Calculation Period as follows:

$$\begin{array}{rcccl} \text{Fixed} & & \text{Fixed Rate Payer} & & \text{Fixed} & & \text{Fixed Rate} \\ \text{Amount} & = & \text{Calculation} & \times & \text{Rate} & \times & \text{Day Count} \\ & & \text{Amount} & & & & \text{Fraction} \end{array}$$

**Section 5.2. Fixed Rate.** "Fixed Rate" means, for any Fixed Rate Payer Payment Date or for any Fixed Rate Payer Calculation Period in respect of a Fixed Rate Payer Payment Date, a rate, expressed as a decimal, equal to the per annum rate specified in the related Confirmation.

**Section 5.3. Fixed Rate Day Count Fraction.** "Fixed Rate Day Count Fraction" means, in respect of a Credit Derivative Transaction and the calculation of a Fixed Amount:

(a) if "Actual/365" or "Actual/Actual" is specified in the Confirmation, the actual number of days in the Fixed Rate Payer Calculation Period in respect of which payment is being made divided by 365 (or, if any portion of that Fixed Rate Payer Calculation Period falls in a leap year, the sum of (i) the actual number of days in that portion of the Fixed Rate Payer Calculation Period falling in a leap year divided by 366 and (ii) the actual number of days in that portion of the Fixed Rate Payer Calculation Period falling in a non-leap year divided by 365);

(b) if "Actual/365 (Fixed)" is specified in the Confirmation, the actual number of days in the Fixed Rate Payer Calculation Period in respect of which payment is being made divided by 365;

(c) if "Actual/360", "Act/360" or "A/360" is specified in the Confirmation, the actual number of days in the Fixed Rate Payer Calculation Period in respect of which payment is being made divided by 360;

(d) if "30/360" or "Bond Basis" is specified in the Confirmation, the number of days in the Fixed Rate Payer Calculation Period in respect of which payment is being made divided by 360 (the number of days to be calculated on the basis of a year of 360 days with twelve thirty-day months (unless (i) the last day of the Fixed Rate Payer Calculation Period is the thirty-first day

of a month but the first day of the Fixed Rate Payer Calculation Period is a day other than the thirtieth or thirty-first day of a month, in which case the month that includes that last day shall not be considered to be shortened to a thirty-day month, or (ii) the last day of the Fixed Rate Payer Calculation Period is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a thirty-day month);

(e) if "30E/360" or "Eurobond Basis" is specified, the number of days in the Fixed Rate Payer Calculation Period in respect of which payment is being made divided by 360 (the number of days to be calculated on the basis of a year of 360 days with twelve thirty-day months, without regard to the date of the first day or last day of the Fixed Rate Payer Calculation Period unless, in the case of the final Fixed Rate Payer Calculation Period, the last day of the final Fixed Rate Payer Calculation Period is the last day of the month of February, in which case the month of February shall not be considered to be lengthened to a thirty-day month); and

(f) if neither "Actual/365", "Actual/Actual", "Actual/365 (Fixed)", "Actual/360", "Act/360", "A/360", "30/360", "Bond Basis", "30E/360" nor "Eurobond Basis" is specified in relation to a Credit Derivative Transaction, the Fixed Rate Day Count Fraction shall be "Actual/360".

**Section 5.4. Relating Fixed Rate Payer Payments to Fixed Rate Payer Calculation Periods.** Unless specified otherwise in the related Confirmation, where the Fixed Amount is calculated by reference to a Fixed Rate Payer Calculation Period, the Fixed Amount applicable to a Fixed Rate Payer Payment Date will be the Fixed Amount calculated with reference to the Fixed Rate Payer Calculation Period ending on, but excluding, the Fixed Rate Payer Period End Date that is (or is closest in time to) that Fixed Rate Payer Payment Date or, in the case of the final Fixed Rate Payer Calculation Period, ending on, and including, the earlier to occur of the Scheduled Termination Date and the Event Determination Date.

## ARTICLE VI

### GENERAL TERMS RELATING TO SETTLEMENT

**Section 6.1. Settlement Method.** "Settlement Method" means, with respect to a Credit Derivative Transaction, (a) if Cash Settlement is specified in the related Confirmation or is deemed to be applicable, Cash Settlement or (b) if Physical Settlement is specified in the related Confirmation, Physical Settlement.

**Section 6.2. Settlement Date.** "Settlement Date" means either the Cash Settlement Date or the Physical Settlement Date, as applicable.

**Section 6.3. Settlement Currency.** "Settlement Currency" means the currency specified as such in the related Confirmation or, if no currency is so specified, the currency of denomination of the Floating Rate Payer Calculation Amount.

## ARTICLE VII

### TERMS RELATING TO CASH SETTLEMENT

**Section 7.1. Cash Settlement.** If "Cash Settlement" is specified in relation to a Credit Derivative Transaction or is deemed to apply pursuant to Section 9.3, 9.4, 9.5 or 9.6, Seller shall, subject to Section 3.1, pay to Buyer the Cash Settlement Amount on the Cash Settlement Date.

**Section 7.2. Cash Settlement Date.** "Cash Settlement Date" means (a) if the Cash Settlement Amount is not specified in the related Confirmation, the date that is the number of Business Days specified in the related Confirmation (or, if a number of Business Days is not so specified, three Business Days) following the calculation of the Final Price and (b) if the Cash Settlement Amount is specified in the related Confirmation, the date that is the number of Business Days specified in the related Confirmation (or, if a number of Business Days is not so specified, three Business Days) following the satisfaction of all Conditions to Settlement. The Cash Settlement Date shall be the Termination Date.

**Section 7.3. Cash Settlement Amount.** "Cash Settlement Amount" means the amount specified as such in the related Confirmation or, if an amount is not specified, the greater of (a) (i) the Floating Rate Payer Calculation Amount multiplied by (ii) the Reference Price minus the Final Price and (b) zero.

**Section 7.4. Final Price.** "Final Price" means the price of the Reference Obligation, expressed as a percentage, determined in accordance with the specified Valuation Method. The Calculation Agent shall, as soon as practicable after obtaining all Quotations for a Valuation Date, notify the parties in writing of each such Quotation that it receives in connection with the calculation of the Final Price and shall provide to the parties a written computation showing its calculation of the Final Price.

**Section 7.5. Valuation Method.**

(a) The following Valuation Methods may be specified in the related Confirmation for a Credit Derivative Transaction with only one Reference Obligation and only one Valuation Date:

(i) "Market" means the Market Value determined by the Calculation Agent with respect to the Valuation Date; or

(ii) "Highest" means the highest Quotation obtained by the Calculation Agent (or in accordance with Section 7.7(b)) with respect to the Valuation Date.

If no such Valuation Method is specified in the related Confirmation, the Valuation Method shall be Highest.

(b) The following Valuation Methods may be specified in the related Confirmation for a Credit Derivative Transaction with only one Reference Obligation and more than one Valuation Date:

(i) "Average Market" means the unweighted arithmetic mean of the Market Values determined by the Calculation Agent with respect to each Valuation Date; or

(ii) "Highest" means the highest Quotation obtained by the Calculation Agent (or in accordance with Section 7.7(b)) with respect to any Valuation Date; or

(iii) "Average Highest" means the unweighted arithmetic mean of the highest Quotations obtained by the Calculation Agent (or in accordance with Section 7.7(b)) with respect to each Valuation Date.

If no such Valuation Method is specified, the Valuation Method shall be Average Highest.

(c) The following Valuation Methods may be specified for a Credit Derivative Transaction with more than one Reference Obligation and only one Valuation Date:

(i) "Blended Market" means the unweighted arithmetic mean of the Market Values for each Reference Obligation determined by the Calculation Agent with respect to the Valuation Date; or

(ii) "Blended Highest" means the unweighted arithmetic mean of the highest Quotations obtained by the Calculation Agent (or in accordance with Section 7.7(b)) for each Reference Obligation with respect to the Valuation Date.

If no such Valuation Method is specified, the Valuation Method shall be Blended Highest.

(d) The following Valuation Methods may be specified for a Credit Derivative Transaction with more than one Reference Obligation and more than one Valuation Date:

(i) "Average Blended Market" means, using values with respect to each Valuation Date determined by the Calculation Agent in accordance with the Blended Market Valuation Method, the unweighted arithmetic mean of the values so determined with respect to each Valuation Date; or

(ii) "Average Blended Highest" means, using values with respect to each Valuation Date determined by the Calculation Agent in accordance with the Blended Highest Valuation Method, the unweighted arithmetic mean of the values so determined with respect to each Valuation Date.

If no such Valuation Method is specified, the Valuation Method shall be Average Blended Highest.

(e) Notwithstanding Section 7.5(a) through (d), if Quotations include Weighted Average Quotations or fewer than two Full Quotations, the Valuation Method shall be Market, Average Market, or Blended Market or Average Blended Market, as the case may be.

**Section 7.6. Market Value.** "Market Value" means, with respect to a Reference Obligation on a Valuation Date, (a) if more than three Full Quotations are obtained, the arithmetic mean of such Full Quotations, disregarding the Full Quotations having the highest and lowest values (and, if more than one such Full Quotations have the same highest value or lowest value, then one of such highest or lowest Full Quotations shall be disregarded); (b) if exactly three Full Quotations are obtained, the Full Quotation remaining after disregarding the highest and lowest Full Quotations (and, if more than one such Full Quotations have the same highest value or lowest value, then one of such highest or lowest Full Quotations shall be disregarded); (c) if exactly two Full Quotations are obtained, the arithmetic mean of such Full Quotations; (d) if fewer than two Full Quotations are obtained and a Weighted Average Quotation is obtained, such Weighted Average Quotation; (e) if fewer than two Full Quotations are obtained and no Weighted Average Quotation is obtained, subject to Section 7.7(b), an amount as determined by the Calculation Agent on the next Business Day on which two or more Full Quotations or a Weighted Average Quotation is obtained; and (f) if two or more Full Quotations or a Weighted Average Quotation are not obtained within the additional five Business Day period set forth in Section 7.7(b), the Market Value shall be determined as provided in Section 7.7(b).

**Section 7.7. Quotation.** "Quotation" means each Full Quotation and the Weighted Average Quotation obtained and expressed as a percentage with respect to a Valuation Date in the manner that follows:

(a) The Calculation Agent shall attempt to obtain Full Quotations with respect to each Valuation Date from five or more Dealers. If the Calculation Agent is unable to obtain two or more such Full Quotations on the same Business Day within three Business Days of a Valuation Date, then on the next following Business Day (and, if necessary, on each Business Day thereafter until the tenth Business Day following the relevant Valuation Date) the Calculation Agent shall attempt to obtain Full Quotations from five or more Dealers and, if two or more Full Quotations are not available, a Weighted Average Quotation.

(b) If the Calculation Agent is a party to the Credit Derivative Transaction and is unable to obtain two or more Full Quotations or a Weighted Average Quotation on the same Business Day on or prior to the tenth Business Day following the applicable Valuation Date, then the party that is not the Calculation Agent may attempt to obtain Full Quotations from five or more Dealers and, if two or more Full Quotations are not available, a Weighted Average Quotation. If such party is able to obtain two or more Full Quotations or a Weighted Average Quotation on the same Business Day within an additional five Business Days, the Calculation Agent shall use such Full Quotations or Weighted Average Quotation to determine the Final Price in accordance with the specified Valuation Method. If such party is unable to obtain two or more Full Quotations or a Weighted Average Quotation on the same Business Day within an additional five Business Days, the Quotations shall be deemed to be any Full Quotation obtained from a Dealer at the Valuation Time on such fifth Business Day or, if no Full Quotation is obtained, the weighted average of any firm quotations for the Reference Obligation obtained from Dealers at the Valuation Time on such fifth Business Day with respect to the aggregate portion of the Quotation Amount for which such

quotations were obtained and a quotation deemed to be zero for the balance of the Quotation Amount for which firm quotations were not obtained on such day. If the Calculation Agent is a third party and is unable to obtain two or more Full Quotations or a Weighted Average Quotation on the same Business Day on or prior to the tenth Business Day following the applicable Valuation Date, Buyer and Seller each may attempt to obtain Full Quotations from five or more Dealers and, if two or more Full Quotations are not available, a Weighted Average Quotation. If either or both parties is (or are) able to obtain two or more Full Quotations or a Weighted Average Quotation on the same Business Day within an additional five Business Days, the Calculation Agent shall use all such Full Quotations or Weighted Average Quotations to determine the Final Price in accordance with the specified Valuation Method. If the parties are unable to obtain between them two or more Full Quotations or a Weighted Average Quotation on the same Business Day within an additional five Business Days, the Quotations shall be deemed to be any Full Quotation obtained from a Dealer at the Valuation Time on such fifth Business Day or, if no Full Quotation is obtained, the weighted average of any firm quotations for the Reference Obligation obtained from Dealers at the Valuation Time on such fifth Business Day with respect to the aggregate portion of the Quotation Amount for which such quotations were obtained and a quotation deemed to be zero for the balance of the Quotation Amount for which firm quotations were not obtained on such day.

(c) (i) If "Include Accrued Interest" is specified in the related Confirmation in respect of Quotations, such Quotations shall include accrued but unpaid interest; (ii) if "Exclude Accrued Interest" is specified in the related Confirmation in respect of Quotations, such Quotations shall not include accrued but unpaid interest; and (iii) if neither "Include Accrued Interest" nor "Exclude Accrued Interest" is specified in the related Confirmation in respect of Quotations, the Calculation Agent shall determine, after consultation with the parties, based on then current market practice in the market of the Reference Obligation, whether such Quotations shall include or exclude accrued but unpaid interest. All Quotations shall be obtained in accordance with this specification or determination.

(d) If any Quotation obtained with respect to an Accreting Obligation is expressed as a percentage of the amount payable in respect of such obligation at maturity, such Quotation will instead be expressed as a percentage of the outstanding principal balance (as defined in Section 8.7(a)(i)) for purposes of determining the Final Price.

**Section 7.8. Valuation Date.** "Valuation Date" means:

(a) if "Single Valuation Date" is specified in the related Confirmation, the date that is the number of Business Days specified in the related Confirmation after satisfaction of all Conditions to Settlement or, if the number of Business Days is not so specified, five Business Days, and (b) if "Multiple Valuation Dates" is specified in the related Confirmation, each of the following dates:

(i) the date that is the number of Business Days specified in the related Confirmation after satisfaction of all Conditions to Settlement (or, if the number of Business Days is not so specified, five Business Days); and

(ii) each successive date that is the number of Business Days specified in the related Confirmation (or, if the number of Business Days is not so specified, five



Business Days) after the date on which the Calculation Agent obtains a Market Value with respect to the immediately preceding Valuation Date.

When "Multiple Valuation Dates" is specified, the total number of Valuation Dates shall be equal to the number of Valuation Dates specified in the related Confirmation (or, if the number of Valuation Dates is not so specified, five Valuation Dates).

If neither Single Valuation Date nor Multiple Valuation Dates is specified in the related Confirmation, Single Valuation Date shall apply.

**Section 7.9. Quotation Method.** The applicable Quotation Method may be specified in the related Confirmation by reference to one of the following terms:

- (a) "Bid" means that only bid quotations shall be requested from Dealers;
- (b) "Offer" means that only offer quotations shall be requested from Dealers; or
- (c) "Mid-market" means that bid and offer quotations shall be requested from Dealers and shall be averaged for purposes of determining a relevant Dealer's quotation.

If a Quotation Method is not specified in the related Confirmation, Bid shall apply.

**Section 7.10. Full Quotation.** "Full Quotation" means, in accordance with the Quotation Method, each firm quotation obtained from a Dealer at the Valuation Time, to the extent reasonably practicable, for an amount of the Reference Obligation with an outstanding principal balance equal to the Quotation Amount.

**Section 7.11. Weighted Average Quotation.** "Weighted Average Quotation" means, in accordance with the Quotation Method, the weighted average of firm quotations obtained from Dealers at the Valuation Time, to the extent reasonably practicable, each for an amount of the Reference Obligation with an outstanding principal balance of as large a size as available but less than the Quotation Amount (but of a size equal to the Minimum Quotation Amount or, if quotations of a size equal to the Minimum Quotation Amount are not available, quotations as near in size as practicable to the Minimum Quotation Amount) that in the aggregate are approximately equal to the Quotation Amount.

**Section 7.12. Quotation Amount.** "Quotation Amount" means the amount specified as such in the related Confirmation (which may be specified by reference to an amount in a currency or by reference to Representative Amount) or, if no amount is so specified, the Floating Rate Payer Calculation Amount (or, in either case, its equivalent in the relevant Obligation Currency converted by the Calculation Agent in a commercially reasonable manner by reference to exchange rates in effect at the time that the relevant Quotation is being obtained).

**Section 7.13. Minimum Quotation Amount.** "Minimum Quotation Amount" means the amount specified as such in the related Confirmation (or its equivalent in the relevant Obligation Currency) or, if no amount is so specified, the lower of (a) USD 1,000,000 (or its equivalent in the relevant Obligation Currency) and (b) the Quotation Amount.

**Section 7.14. Valuation Time.** "Valuation Time" means the time specified as such in the related Confirmation or, if no time is so specified, 11:00 a.m. in the principal trading market for the Reference Obligation.

**Section 7.15. Dealer.** "Dealer" means a dealer (other than one of the parties or any Affiliate of one of the parties, unless otherwise specified in the related Confirmation) in obligations of the type of Obligation(s) for which Quotations are to be obtained, including each Dealer specified in the related Confirmation. If no Dealers are specified in the related Confirmation, the Calculation Agent shall select the Dealers in consultation with the parties, provided that in the case of Section 9.9, Seller shall select the Dealers in good faith and in a commercially reasonable manner. Upon a Dealer no longer being in existence (with no successors), or not being an active dealer in the obligations of the type for which Quotations are to be obtained, the Calculation Agent may substitute any other Dealer(s) for one or more of the foregoing after consultation with the parties.

**Section 7.16. Representative Amount.** "Representative Amount" means an amount that is representative for a single transaction in the relevant market and at the relevant time, such amount to be determined by the Calculation Agent in consultation with the parties.

## ARTICLE VIII

### TERMS RELATING TO PHYSICAL SETTLEMENT

**Section 8.1. Physical Settlement.** If "Physical Settlement" is specified in relation to a Credit Derivative Transaction, Buyer shall, subject to Sections 3.1 and 9.2(c)(ii), on or prior to the Physical Settlement Date, Deliver to Seller the Deliverable Obligations specified in the Notice of Physical Settlement and Seller shall pay to Buyer the Physical Settlement Amount that corresponds to the Deliverable Obligations that Buyer has Delivered. If Buyer Delivers Deliverable Obligations in an amount greater than the Deliverable Obligations specified in the Notice of Physical Settlement, Seller shall not be required to pay more than the Physical Settlement Amount that corresponds to the Deliverable Obligations specified in the Notice of Physical Settlement. For purposes of the foregoing, Delivery by Buyer and payment by Seller shall be made in accordance with market practice applicable to the Deliverable Obligation on the Delivery Date.

In the case of Deliverable Obligations that are Borrowed Money, (i) Buyer shall Deliver Deliverable Obligations with an outstanding principal balance (including accrued but unpaid interest (as determined by the Calculation Agent after consultation with the parties) if "Include Accrued Interest" is specified in the related Confirmation, but excluding accrued but unpaid interest if "Exclude Accrued Interest" is specified in the related Confirmation, and if neither "Include Accrued Interest" nor "Exclude Accrued Interest" is specified in the related Confirmation, excluding accrued but unpaid interest) and (ii) in the case of Deliverable Obligations that are not Borrowed Money, Buyer shall Deliver Deliverable Obligations with a Due and Payable Amount (or, in the case of either (i) or (ii), the equivalent Currency Amount of any such amount), in the aggregate amount as of the relevant Delivery Dates equal to the Physical Settlement Amount.

If an obligation by its terms represents or contemplates an obligation to pay an amount greater than the outstanding principal balance of such obligation as of the Delivery Date as a result of the occurrence or nonoccurrence of an event or circumstance, the outstanding principal balance of such obligation shall not include any additional amount that would be payable upon the occurrence or nonoccurrence of such event or circumstance.

**Section 8.2. Deliver.** "Deliver" means to deliver, novate, transfer (including, in the case of a Qualifying Guarantee, transfer of the benefit of the Qualifying Guarantee), assign or sell, as appropriate, in the manner customary for the settlement of the applicable Deliverable Obligations (which shall include executing all necessary documentation and taking any other necessary actions), in order to convey all right, title and interest in the Deliverable Obligations specified in the Notice of Physical Settlement to Seller free and clear of any and all liens, charges, claims or encumbrances (including, without limitation, any counterclaim, defense (other than a counterclaim or defense based on the factors set forth in Section 4.1(a)-(d)) or right of set off by or of the Reference Entity or, as applicable, an Underlying Obligor); provided that to the extent that the Deliverable Obligations consist of Direct Loan Participations, "Deliver" means to create (or procure the creation) of a participation in favor of the Seller and to the extent that the Deliverable Obligations consist of Qualifying Guarantees, "Deliver" means to Deliver both the Qualifying Guarantee and the Underlying Obligation. "Delivery" and "Delivered" will be construed accordingly. In the case

of a Loan, Delivery shall be effected using documentation substantially in the form of the documentation customarily used in the relevant market for Delivery of such Loan at that time.

**Section 8.3. Delivery Date.** "Delivery Date" means, with respect to a Deliverable Obligation, the date such Deliverable Obligation is Delivered.

**Section 8.4. Physical Settlement Date.** "Physical Settlement Date" means the last day of the longest Physical Settlement Period following the satisfaction of all applicable Conditions to Settlement. If all Deliverable Obligations specified in the Notice of Physical Settlement are Delivered on or before the Physical Settlement Date, the Physical Settlement Date shall be the Termination Date.

**Section 8.5. Physical Settlement Amount.** "Physical Settlement Amount" means the Floating Rate Payer Calculation Amount multiplied by the Reference Price.

**Section 8.6. Physical Settlement Period.** "Physical Settlement Period" means the number of Business Days specified as such in the related Confirmation or, if a number of Business Days is not so specified, then, with respect to a Deliverable Obligation specified in the Notice of Physical Settlement, the longest number of Business Days for settlement in accordance with then current market practice of such Deliverable Obligation, as determined by the Calculation Agent after consultation with the parties.

**Section 8.7. Provisions Applicable to Convertible, Exchangeable and Accreting Obligations.**

(a)(i) With respect to any Accreting Obligation, "outstanding principal balance" means the Accreted Amount thereof.

(ii) With respect to any Exchangeable Obligation that is not an Accreting Obligation, "outstanding principal balance" shall exclude any amount that may be payable under the terms of such obligation in respect of the value of the Equity Securities for which such obligation is exchangeable.

(b)(i) "Accreted Amount" means, with respect to an Accreting Obligation, an amount equal to (A) the sum of (1) the original issue price of such obligation and (2) the portion of the amount payable at maturity that has accreted in accordance with the terms of the obligation (or as otherwise described below), less (B) any cash payments made by the obligor thereunder that, under the terms of such obligation, reduce the amount payable at maturity (unless such cash payments have been accounted for in clause (A)(2) above), in each case calculated as of the earlier of (x) the date on which any event occurs that has the effect of fixing the amount of a claim in respect of principal and (y) the Delivery Date or applicable Valuation Date, as the case may be. Such Accreted Amount shall include any accrued and unpaid periodic cash interest payments (as determined by the Calculation Agent after consultation with the parties) only if "Include Accrued Interest" is specified as being applicable. If an Accreting Obligation is expressed to accrete pursuant to a straight-line method or if such Obligation's yield to maturity is not specified in, nor implied from, the

terms of such Obligation, then, for purposes of clause (A)(2) above, the Accreted Amount shall be calculated using a rate equal to the yield to maturity of such Obligation. Such yield shall be determined on a semiannual bond equivalent basis using the original issue price of such obligation and the amount payable at the scheduled maturity of such obligation, and shall be determined as of the earlier of (x) the date on which any event occurs that has the effect of fixing the amount of a claim in respect of principal and (y) the Delivery Date or applicable Valuation Date, as the case may be. The Accreted Amount shall exclude, in the case of an Exchangeable Obligation, any amount that may be payable under the terms of such obligation in respect of the value of the Equity Securities for which such obligation is exchangeable.

(ii) "Accreting Obligation" means any obligation (including, without limitation, a Convertible Obligation or an Exchangeable Obligation), the terms of which expressly provide for an amount payable upon acceleration equal to the original issue price (whether or not equal to the face amount thereof) plus an additional amount or amounts (on account of original issue discount or other accruals of interest or principal not payable on a periodic basis) that will or may accrete, whether or not (A) payment of such additional amounts is subject to a contingency or determined by reference to a formula or index, or (B) periodic cash interest is also payable.

(iii) "Convertible Obligation" means any obligation that is convertible, in whole or in part, into Equity Securities solely at the option of holders of such obligation or a trustee or similar agent acting for the benefit only of holders of such obligation (or the cash equivalent thereof, whether the cash settlement option is that of the issuer or of (or for the benefit of) the holders of such obligation).

(iv) "Equity Securities" means:

(A) in the case of a Convertible Obligation, equity securities (including options and warrants) of the issuer of such obligation or depositary receipts representing those equity securities of the issuer of such obligation together with any other property distributed to or made available to holders of those equity securities from time to time; and

(B) in the case of an Exchangeable Obligation, equity securities (including options and warrants) of a person other than the issuer of such obligation or depositary receipts representing those equity securities of a person other than the issuer of such obligation together with any other property distributed to or made available to holders of those equity securities from time to time.

(v) "Exchangeable Obligation" means any obligation that is exchangeable, in whole or in part, for Equity Securities solely at the option of holders of such obligation or a trustee or similar agent acting for the benefit only of holders of such obligation (or the cash equivalent thereof, whether the cash

settlement option is that of the issuer or of (or for the benefit of) the holders of such obligation).

**Section 8.8. Due and Payable Amount.** "Due and Payable Amount" means the amount that is due and payable under (and in accordance with the terms of) a Deliverable Obligation on the Delivery Date, whether by reason of acceleration, maturity, termination or otherwise (excluding sums in respect of default interest, indemnities, tax gross-ups and other similar amounts).

**Section 8.9. Currency Amount.** "Currency Amount" means, whenever an amount is denominated in a currency other than the Settlement Currency and is specified in these Definitions to be determined by reference to a Currency Amount, such amount converted to the relevant Settlement Currency using the Currency Rate.

**Section 8.10. Currency Rate.** "Currency Rate" means (a) the rate determined by the Calculation Agent equal to the rate of conversion of the currency of the Deliverable Obligation into the Settlement Currency by reference to (i) if the Settlement Currency is U.S. Dollars, the Federal Reserve Bank of New York 10:00 a.m. (New York time) mid-point rate as displayed on Reuters Page FEDSPOT on the date the Notice of Physical Settlement is effective (or, if the Notice of Physical Settlement is changed on or prior to the Physical Settlement Date, the date notice of the last such change is effective), or in such other commercially reasonable manner as it shall determine after consultation with the parties, or (ii) if the Settlement Currency is euros, the MEAN price as displayed on Reuters Page EUROFX/1 as of 12:00 p.m. (London time) on the date the Notice of Physical Settlement is effective (or, if the Notice of Physical Settlement is changed on or prior to the Physical Settlement Date, the date notice of the last such change is effective), or in such other commercially reasonable manner as it shall determine after consultation with the parties, or (b) if the Settlement Currency is not U.S. Dollars or euros, the rate determined by the Calculation Agent in a commercially reasonable manner after consultation with the parties. Corrections of errors or inconsistencies in the detailed description of the Deliverable Obligations specified in the Notice of Physical Settlement do not constitute changes for purposes of this Section 8.10.

**Section 8.11. Escrow.**

(a) "Escrow" means, if Escrow is specified in the related Confirmation as applicable, either party may require that Physical Settlement take place through the use of an Escrow Agent. Any costs or expenses incurred in connection with establishing such escrow arrangement shall be borne by the party requiring such arrangement.

(b) If a party requires that Physical Settlement take place through an Escrow Agent, Delivery to the Escrow Agent by a party must occur within the time required for Physical Settlement as if there were no Escrow Agent.

(c) "Escrow Agent" means a financial institution that the parties to a Credit Derivative Transaction specify as such in the related Confirmation (or, if a person is not so specified, an independent third party financial institution specified by Buyer prior to the Physical Settlement Date, subject to the terms of the escrow arrangement).

## ARTICLE IX

### ADDITIONAL REPRESENTATIONS AND AGREEMENTS OF THE PARTIES

#### **Section 9.1. Additional Representations and Agreements of the Parties.**

(a) Buyer and Seller shall each be deemed to represent to the other party on the Trade Date of a Credit Derivative Transaction that, in connection with such Credit Derivative Transaction, neither the other party nor any of the other party's Affiliates has made any representation whatsoever with respect to the Reference Entity, any Reference Obligation, any Obligation, any Deliverable Obligation, any Underlying Obligor or any Underlying Obligation on which it is relying or is entitled to rely.

(b) At the time a Credit Derivative Transaction is entered into, Buyer and Seller shall each be deemed to agree with the other that, so long as either party has or may have any obligation under such Credit Derivative Transaction:

(i) the parties will be obligated to perform, subject to Section 3.1, in accordance with the Settlement Method applicable to such Credit Derivative Transaction, irrespective of the existence or amount of the parties' credit exposure to a Reference Entity, and Buyer need not suffer any loss nor provide evidence of any loss as a result of the occurrence of a Credit Event;

(ii) such Credit Derivative Transaction does not create any rights or impose any obligations in respect of any entity that is not a party to such Credit Derivative Transaction;

(iii) each party and its Affiliates and the Calculation Agent may deal in each Reference Obligation, Obligation, Deliverable Obligation or Underlying Obligation and may, where permitted, accept deposits from, make loans or otherwise extend credit to, and generally engage in any kind of commercial or investment banking or other business with, a Reference Entity, any Affiliate of a Reference Entity, any Underlying Obligor or any other person or entity having obligations relating to a Reference Entity or any Underlying Obligor, and may act with respect to such business in the same manner as each of them would if such Credit Derivative Transaction did not exist, regardless of whether any such action might have an adverse effect on a Reference Entity, any Underlying Obligor or the position of the other party to such Credit Derivative Transaction or otherwise (including, without limitation, any action which might constitute or give rise to a Credit Event);

(iv) each party and its Affiliates and the Calculation Agent may, whether by virtue of the types of relationships described herein or otherwise, on the Trade Date or at any time thereafter, be in possession of information in relation to a Reference Entity or any Underlying Obligor that is or may be material in the context of such Credit Derivative Transaction and that may or may not be publicly available or known to the other party, and such Credit Derivative Transaction does not create any obligation on the part of such party, its Affiliates or the Calculation Agent to

disclose to the other party any such relationship or information (whether or not confidential); and

(v) unless it is otherwise bound by or subject to a confidentiality obligation or agreement, a party receiving any information from the other party with respect to such Credit Derivative Transaction shall not become subject to any obligation of confidentiality in respect of that information and the transferor of such information shall indemnify and hold harmless the transferee for any loss, liability, claim, damage and expense whatsoever incurred by the transferee arising out of the breach of any law or understanding or agreement with respect to the confidentiality of that information to which the transferor may be party.

### **Section 9.2. Additional Representations and Agreements for Physical Settlement.**

(a) If Physical Settlement applies to a Credit Derivative Transaction (except in relation to Direct Loan Participations), Buyer shall be deemed to represent to Seller on each Delivery Date (which representation shall survive any such Delivery Date) that it has conveyed (or, if applicable, caused to be conveyed) to Seller (or, if applicable, its designee) all right, title and interest in the Deliverable Obligations being Delivered on such date free and clear of any and all liens, charges, claims or encumbrances (including, without limitation, any counterclaim, defense (other than a counterclaim or defense based on the factors set forth in Section 4.1(a)-(d)) or right of set off by or of the Reference Entity or, as applicable, an Underlying Obligor). Subject to reasonable verification by Buyer, Buyer shall indemnify and hold harmless Seller for any loss, liability, claim, damage and expense whatsoever incurred arising out of Buyer's breach of the representations contained in this Section 9.2(a). The indemnification in the preceding sentence shall survive the Termination Date. Any breach of the representations contained in this Section 9.2(a) shall not constitute an event of default as agreed to between the parties in any master agreement governing the Credit Derivative Transaction.

(b) If Physical Settlement applies to a Credit Derivative Transaction, Buyer shall be deemed to represent to Seller on each Delivery Date (which representation shall survive any such Delivery Date) that, unless Seller has received an indemnity acceptable to Seller from Buyer with respect to the following, Delivery of such Deliverable Obligations to Seller and transfer of such Deliverable Obligations by Seller to a third party will not require or cause Seller to assume, and will not subject Seller to, any obligation, liability or commitment to lend additional funds (including any outstanding contingent commitment) (in each case other than (i) immaterial, nonpayment obligations and any assignment or transfer fee in respect of Loans and (ii) obligations arising under customary provisions in respect of Borrowed Money, including but not limited to requirements that holders thereof indemnify or reimburse a trustee, administrative or fiscal agent or similar person or entity for costs, liabilities or expenses and customary pro rata sharing provisions requiring any amount received by a lender through payment, set-off or otherwise other than through the procedures set forth in the relevant Loan documentation to be shared with other lenders).



(c) If Physical Settlement applies to a Credit Derivative Transaction:

(i) Buyer and Seller agree (which agreement shall survive the Termination Date) to execute, deliver, file and record any specific assignment, novation or other document and to take any other action that may be necessary or customary or desirable and reasonably requested by the other party in connection with Buyer's Delivery of the Deliverable Obligations specified in the Notice of Physical Settlement (including demonstrating to the reasonable satisfaction of Seller that Buyer has taken all reasonable steps to obtain any requisite consents and keeping Seller apprised of any occurrence of which Buyer is (or reasonably should be) aware that may affect Buyer's ability to Deliver to Seller Deliverable Obligations as specified in the Notice of Physical Settlement) and Buyer and Seller agree to cooperate reasonably in connection with the foregoing;

(ii) Subject to Sections 9.3, 9.4, 9.5, 9.6, 9.9 and 9.10, Buyer may Deliver only the Deliverable Obligations specified in the Notice of Physical Settlement and only in the amounts specified therein. Buyer may continue to attempt to Deliver the whole of the Deliverable Obligations specified in the Notice of Physical Settlement (x) in the case of Deliverable Obligations that are Bonds or Loans, after the Physical Settlement Date and (y) in the case of Deliverable Obligations that are not Bonds or Loans, for an additional five Business Days after the Physical Settlement Date. If Buyer fails to Deliver Deliverable Obligations as specified in the Notice of Physical Settlement, such failure shall not constitute an event of default as agreed to between the parties in any master agreement governing the Credit Derivative Transaction. Subject to Sections 9.3, 9.4, 9.5 and 9.6, the latest of (A) the date that Buyer completes Delivery of the Deliverable Obligations specified in the Notice of Physical Settlement (or, if such Delivery includes Deliverable Obligations that are not Bonds or Loans, the later of (1) the date that Buyer completes Delivery of the Deliverable Obligations that are Bonds or Loans and (2) the date that is five Business Days after the Physical Settlement Date), (B) the date that Seller completes a buy-in pursuant to Section 9.9 with respect to all Bonds specified in the Notice of Physical Settlement that Buyer has failed to Deliver (or, if earlier, the latest date all such Bonds cease to exist) and (C) the date that alternative delivery pursuant to Section 9.10 has been completed with respect to all Loans specified in the Notice of Physical Settlement that Buyer has failed to Deliver, shall be deemed to be the Termination Date;

(iii) if an event that would otherwise constitute or give rise to an impossibility or illegality under Section 9.3 occurs and would also constitute an event which would entitle a party to terminate such Credit Derivative Transaction under a master agreement governing the Credit Derivative Transaction, it will be governed by Section 9.3 and will not entitle a party to terminate such Credit Derivative Transaction under a master agreement governing the Credit Derivative Transaction;

(iv) either party (the "designator") may designate any of its Affiliates (the "designee") to Deliver or take Delivery, as the case may be, and otherwise to perform such party's obligations to Deliver or take Delivery, as the case may be, in respect of

a Credit Derivative Transaction and the designee may assume such obligations. Such designation shall not relieve the designator of any of its obligations under such Credit Derivative Transaction. If the designee has performed the obligations of the designator under such Credit Derivative Transaction, then the designator shall be discharged of its obligations to the other party to the extent of such performance. If, as a result of such designation, (A) it would be illegal due to any applicable law or regulation for the designee to so Deliver or take Delivery, the designator shall not be permitted to designate such designee to Deliver or to take Delivery or (B) such Delivery would give rise to any Tax or any loss or cost to the non-designating party, then the designator shall not be permitted to designate such designee to Deliver or to take Delivery unless the non-designating party has received an indemnity acceptable to it from the designating party with respect to such Tax, loss or cost;

(v) unless otherwise specified in a Confirmation, any recordation, processing or similar fee reasonably incurred by Buyer and payable to the agent under a Loan in connection with an assignment (where Deliverable Obligations include Assignable Loans or Consent Required Loans) or participation (where Deliverable Obligations include Direct Loan Participations) shall be payable by Buyer and Seller equally on the Delivery Date or Latest Permissible Physical Settlement Date, as applicable; and

(vi) notwithstanding any other provision of the Credit Derivative Transaction, if any Stamp Tax is payable in connection with the Delivery of (A) the Reference Obligation (or other Deliverable Obligations of the same type as the Reference Obligation), payment of such Stamp Tax shall be made by the party that would in the ordinary course bear such cost under a contract for purchase of the Reference Obligation or (B) other Deliverable Obligations, payment of such Stamp Tax shall be made by Buyer.

**Section 9.3. Partial Cash Settlement Due to Impossibility or Illegality.** If, due to an event beyond the control of Buyer, it is impossible or illegal for Buyer to Deliver, or due to an event beyond the control of Seller it is impossible or illegal for Seller to accept Delivery of, any of the Deliverable Obligations specified in the Notice of Physical Settlement on the Physical Settlement Date (including, without limitation, failure of the relevant clearance system or due to any law, regulation or court order, but excluding market conditions or the failure to obtain any requisite consent with respect to the Delivery of Loans), then on or before such date (a) Buyer shall Deliver and Seller shall take Delivery of any of the Deliverable Obligations specified in the Notice of Physical Settlement for which it is possible and legal to take Delivery and Seller shall make a payment of that portion of the Physical Settlement Amount that corresponds to the amount of Deliverable Obligations that are Delivered in accordance with market practice applicable to the Deliverable Obligation on the Delivery Date and (b) Buyer or Seller, as applicable, shall provide a description in reasonable detail of the facts giving rise to such impossibility or illegality and, as soon as practicable thereafter, Buyer shall Deliver and Seller shall take Delivery of the Deliverable Obligations specified in the Notice of Physical Settlement which were not Delivered and Seller shall make a payment of that portion of the Physical Settlement Amount that corresponds to the amount of Deliverable Obligations that are Delivered in accordance with market practice applicable to the Deliverable Obligation on the Delivery Date. The date on which the Deliverable Obligations

specified in the Notice of Physical Settlement which were not Delivered are subsequently delivered shall be the Termination Date. If, following the occurrence of any such impossibility or illegality, the amount of Deliverable Obligations that are to be Delivered as specified in the Notice of Physical Settlement are not Delivered to Seller on or prior to the Latest Permissible Physical Settlement Date, Cash Settlement pursuant to the Partial Cash Settlement Terms shall be deemed to apply to the Credit Derivative Transaction with respect to the Deliverable Obligations that cannot be Delivered (the "Undeliverable Obligations").

**Section 9.4. Partial Cash Settlement of Consent Required Loans. If:**

(a) "Partial Cash Settlement of Consent Required Loans Applicable" is specified in the related Confirmation;

(b) the Deliverable Obligations specified in the Notice of Physical Settlement include Consent Required Loans that, due to the non-receipt of any requisite consents, are not, on the Physical Settlement Date, capable of being assigned or novated to Seller or its designee and such consents are not obtained or deemed given by the Latest Permissible Physical Settlement Date; and

(c) (i) Direct Loan Participation is not specified as a Deliverable Obligation Characteristic in the related Confirmation or (ii) Direct Loan Participation is specified as a Deliverable Obligation Characteristic in the related Confirmation and the relevant participation is not effected on or before the Latest Permissible Physical Settlement Date,

Cash Settlement pursuant to the Partial Cash Settlement Terms shall be deemed to apply to the Credit Derivative Transaction with respect to the Deliverable Obligations specified in the Notice of Physical Settlement that consist of Consent Required Loans for which consents are not obtained or deemed given (the "Undeliverable Loan Obligations").

**Section 9.5. Partial Cash Settlement of Assignable Loans. If:**

(a) "Partial Cash Settlement of Assignable Loans Applicable" is specified in the related Confirmation;

(b) the Deliverable Obligations specified in the Notice of Physical Settlement include Assignable Loans that, due to the non-receipt of any requisite consents, are not, on the Physical Settlement Date, capable of being assigned or novated to Seller or its designee and such consents are not obtained or deemed given by the Latest Permissible Physical Settlement Date; and

(c) (i) Direct Loan Participation is not specified as a Deliverable Obligation Characteristic in the related Confirmation or (ii) Direct Loan Participation is specified as a Deliverable Obligation Characteristic in the related Confirmation and the relevant participation is not effected on or before the Latest Permissible Physical Settlement Date,

Cash Settlement pursuant to the Partial Cash Settlement Terms shall be deemed to apply to the Credit Derivative Transaction with respect to the Deliverable Obligations specified in the Notice of

Physical Settlement that consist of Assignable Loans for which consents are not obtained or deemed given (the "Unassignable Obligations").

**Section 9.6. Partial Cash Settlement of Participations.** If:

(a) "Partial Cash Settlement of Participations Applicable" is specified in the related Confirmation; and

(b) the Deliverable Obligations include Direct Loan Participations and the relevant participation is not effected on or before the Latest Permissible Physical Settlement Date,

Cash Settlement pursuant to the Partial Cash Settlement Terms shall be deemed to apply to the Credit Derivative Transaction with respect to the Deliverable Obligations specified in the Notice of Physical Settlement that consist of Direct Loan Participations in respect of which the relevant participation is not effected (the "Undeliverable Participations").

**Section 9.7. Latest Permissible Physical Settlement Date.** "Latest Permissible Physical Settlement Date" means, in respect of Section 9.3, the date that is thirty calendar days after the Physical Settlement Date and, in respect of Sections 9.4, 9.5 and 9.6, the date that is fifteen Business Days after the Physical Settlement Date (or, where Section 2.33(b)(i)(C) applies, the date deemed pursuant to that Section).

**Section 9.8. Partial Cash Settlement Terms.** Unless specified otherwise in the related Confirmation, the following terms are deemed to be defined as follows for the purposes of the Partial Cash Settlement Terms referred to in Sections 9.3, 9.4, 9.5 and 9.6:

(a) "Cash Settlement Amount" is deemed to be, for each Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation, the aggregate of the greater of (i)(A) the outstanding principal balance, Due and Payable Amount or Currency Amount, as applicable, of each Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation multiplied by (B) the Reference Price minus the Final Price with respect to such Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation and (ii) zero;

(b) "Cash Settlement Date" is deemed to be the date that is three Business Days after the calculation of the Final Price, which date shall also be the Termination Date;

(c) "Reference Obligation" is deemed to be each Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation and "Reference Price" is deemed to be one hundred per cent;

(d) "Valuation Date" is deemed to be the date that is two Business Days after the Latest Permissible Physical Settlement Date;

(e) "Valuation Method" is deemed to be Highest unless fewer than two Full Quotations are obtained or a Weighted Average Quotation applies (or, if applicable, Indicative Quotations), in which case, "Valuation Method" is deemed to be Market;

(f) "Quotation Method" is deemed to be Bid;

(g) "Quotation Amount" is deemed to be, with respect to each type or issue of Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation, an amount equal to the outstanding principal balance or Due and Payable Amount (or, in either case, its equivalent in the relevant Obligation Currency converted by the Calculation Agent in a commercially reasonable manner by reference to exchange rates in effect at the time that the relevant Quotation is being obtained), as applicable, of such Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation;

(h) There shall be no "Minimum Quotation Amount"; and

(i) "Valuation Time" is the time specified as such in the related Confirmation or, if no time is so specified, 11:00 a.m. in the principal trading market for the Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation (as applicable).

(j) "Market Value" means, with respect to an Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation (as applicable) on a Valuation Date, (i) if more than three Full Quotations are obtained, the arithmetic mean of such Full Quotations, disregarding the Full Quotations having the highest and lowest values (and, if more than one such Full Quotations have the same highest value or lowest value, then one of such highest or lowest Full Quotations shall be disregarded); (ii) if exactly three Full Quotations are obtained, the Full Quotation remaining after disregarding the highest and lowest Full Quotations (and, if more than one such Full Quotations have the same highest value or lowest value, then one of such highest or lowest Full Quotations shall be disregarded); (iii) if exactly two Full Quotations are obtained, the arithmetic mean of such Full Quotations; (iv) if fewer than two Full Quotations are obtained and a Weighted Average Quotation is obtained, such Weighted Average Quotation; (v) if Indicative Quotations are applicable and exactly three Indicative Quotations are obtained, the Indicative Quotation remaining after disregarding the highest and lowest Indicative Quotations (and, if more than one such Indicative Quotations have the same highest or lowest value, then one of such highest or lowest Indicative Quotations shall be disregarded); (vi) if fewer than two Full Quotations are obtained, no Weighted Average Quotation is obtained (and, if Indicative Quotations are applicable, fewer than three Indicative Quotations are obtained) then, subject to clause (k)(ii), an amount as determined by the Calculation Agent on the next Business Day on which two or more Full Quotations, a Weighted Average Quotation or, if applicable, three Indicative Quotations are obtained; and (vii) if fewer than two Full Quotations are obtained, no Weighted Average Quotation is obtained (and, if Indicative Quotations are applicable, fewer than three Indicative Quotations are obtained) within the additional five Business Day period set forth in clause (k)(ii), the Market Value shall be determined as provided in clause (k)(ii).

(k) "Quotation" means each Full Quotation, the Weighted Average Quotation and, if Indicative Quotations are applicable, each Indicative Quotation obtained and expressed as a percentage with respect to a Valuation Date in the manner that follows:

(i) The Calculation Agent shall attempt to obtain Full Quotations with respect to each Valuation Date from five or more Dealers. If the Calculation Agent is unable to obtain two or more such Full Quotations on the same Business Day within three Business Days of a Valuation Date, then on the next following Business Day (and, if necessary, on each Business Day thereafter until the tenth Business Day following the relevant Valuation Date) the Calculation Agent shall attempt to obtain Full Quotations from five or more Dealers, and, if two or more Full Quotations are not available, a Weighted Average Quotation. If two or more such Full Quotations or a Weighted Average Quotation are not available on any such Business Day and Indicative Quotations are applicable, the Calculation Agent shall attempt to obtain three Indicative Quotations from five or more Dealers.

(ii) If the Calculation Agent is a party to the Credit Derivative Transaction and is unable to obtain two or more Full Quotations or a Weighted Average Quotation (or, if Indicative Quotations are applicable, three Indicative Quotations) on the same Business Day on or prior to the tenth Business Day following the applicable Valuation Date, then the party that is not the Calculation Agent may attempt to obtain Full Quotations from five or more Dealers and, if two or more Full Quotations are not available, a Weighted Average Quotation (or, if Indicative Quotations are applicable, three Indicative Quotations). If such party is able to obtain two or more Full Quotations or a Weighted Average Quotation (or, if Indicative Quotations are applicable, three Indicative Quotations) on the same Business Day within an additional five Business Days, the Calculation Agent shall use such Full Quotations or Weighted Average Quotation (or, if applicable, Indicative Quotations) to determine the Final Price in accordance with the specified Valuation Method. If such party is unable to obtain two or more Full Quotations, a Weighted Average Quotation (or, if Indicative Quotations are applicable, three Indicative Quotations) on the same Business Day within an additional five Business Days, the Quotations shall be deemed to be any Full Quotation obtained from a Dealer at the Valuation Time on such fifth Business Day or, if no Full Quotation is obtained, the weighted average of any firm quotations (or, if applicable, Indicative Quotations) for the Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation (as applicable) obtained from Dealers at the Valuation Time on such fifth Business Day with respect to the aggregate portion of the Quotation Amount for which such quotations were obtained and a quotation deemed to be zero for the balance of the Quotation Amount for which firm quotations (or, if applicable, Indicative Quotations) were not obtained on such day. If the Calculation Agent is a third party and is unable to obtain two or more Full Quotations or a Weighted Average Quotation (or, if Indicative Quotations are applicable, three Indicative Quotations) on the same Business Day on or prior to the tenth Business Day following the applicable Valuation Date, Buyer and Seller each may attempt to obtain Full Quotations from five or more Dealers and, if two or more Full Quotations are not available, a Weighted Average Quotation (or, if Indicative Quotations are applicable, three Indicative Quotations). If either or both parties is (or are) able to obtain two or more Full Quotations or a Weighted Average Quotation (or, if Indicative Quotations are applicable, three Indicative Quotations) on the same Business Day within an additional five Business Days, the Calculation

Agent shall use all such Full Quotations or Weighted Average Quotations (or, if applicable, Indicative Quotations) to determine the Final Price in accordance with the specified Valuation Method. If the parties are unable to obtain between them two or more Full Quotations or a Weighted Average Quotation (or, if Indicative Quotations are applicable, three Indicative Quotations) on the same Business Day within an additional five Business Days, the Quotations shall be deemed to be any Full Quotation obtained from a Dealer at the Valuation Time on such fifth Business Day or, if no Full Quotation is obtained, the weighted average of any firm quotations (or, if applicable, Indicative Quotations) for the Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation (as applicable) obtained from Dealers at the Valuation Time on such fifth Business Day with respect to the aggregate portion of the Quotation Amount for which such quotations were obtained and a quotation deemed to be zero for the balance of the Quotation Amount for which firm quotations (or, if applicable, Indicative Quotations) were not obtained on such day.

(iii) The Calculation Agent shall determine, after consultation with the parties, based on the then current market practice in the market of the relevant Undeliverable Obligation, Undeliverable Loan Obligation, Undeliverable Participation or Unassignable Obligation, whether such Quotations shall include or exclude accrued but unpaid interest. All Quotations shall be obtained in accordance with this specification or determination.

(iv) If any Quotation obtained with respect to an Accreting Obligation is expressed as a percentage of the amount payable in respect of such obligation at maturity, such Quotation will instead be expressed as a percentage of the outstanding principal balance (as defined in Section 8.7(a)(i)) for purposes of determining the Final Price.

(l) "Indicative Quotation" shall mean, in accordance with the Quotation Method, each quotation obtained from a Dealer at the Valuation Time for (to the extent reasonably practicable) an amount of the Undeliverable Obligation equal to the Quotation Amount, which reflects such Dealer's reasonable assessment of the price of such Undeliverable Obligation based on such factors as such Dealer may consider relevant, which may include historical prices and recovery rates.

(m) Indicative Quotations shall be applicable under this Section 9.8 only in the event that the Partial Cash Settlement Terms become applicable to a Credit Derivative Transaction due to the occurrence of an event giving rise to an impossibility or illegality under Section 9.3.

**Section 9.9. Buy-in of Bonds Not Delivered.** At any time after the date that is five Business Days after the Physical Settlement Date, if Buyer has not Delivered any Deliverable Obligations specified in the Notice of Physical Settlement that are Bonds, Seller may exercise a right to close out all or a portion of the Credit Derivative Transaction by the purchase of such Bonds under the terms of this Section 9.9 (a "buy-in"), unless such failure to Deliver is due to an event described in Section 9.3 (in which case Section 9.3 shall apply). Seller will provide Buyer two or more Business Days' notice (which may be by telephone and may be provided prior to the

expiration of the five Business Day period after the Physical Settlement Date) of its intention to buy-in (a "Buy-in Notice"), specifying the date of the anticipated buy-in (the "Buy-in Date"), the Bonds to be subject to the buy-in (to the extent not Delivered prior to the Buy-in Date, the "Relevant Bonds") and the outstanding principal balance thereof sought to be bought-in.

On the Buy-in Date, Seller shall attempt to obtain from five or more Dealers firm quotations for the sale ("Buy-in Offers") of the specified outstanding principal balance of the Relevant Bonds. The lowest Buy-in Offer or, if Seller obtains only one Buy-in Offer, such Buy-in Offer, for the outstanding principal balance of the Relevant Bonds shall be the "Buy-in Price". If Seller is unable to obtain at least one Buy-in Offer from such Dealers on the relevant Buy-in Date for the specified outstanding principal balance of the Relevant Bonds, Seller will attempt to obtain Buy-in Offers for all or a portion of the specified outstanding principal balance of the Relevant Bonds from five or more Dealers on each Business Day following the Buy-in Date until the earlier of (i) the fourth Business Day (inclusive) following such Buy-in Date and (ii) the date a Buy-in Price or Prices are determined for all of the specified outstanding principal balance of the Relevant Bonds (such period commencing on the Buy-in Date, the "Buy-in Period"). Seller will conduct the buy-in in a commercially reasonable manner and in accordance with the procedures set forth herein.

Buyer's right to Deliver the specified outstanding principal balance of the Relevant Bonds shall be suspended only during the Buy-in Period and shall recommence on the first Business Day following the end of the Buy-in Period to the extent Seller has not determined a Buy-in Price or Prices for the specified outstanding principal balance of the Relevant Bonds. Seller shall commit to purchase such principal balance of the Relevant Bonds at the applicable Buy-in Price or Prices. Thereafter, to the extent a Buy-in Price has not been determined during a Buy-in Period with respect to all of the specified outstanding principal balance of the Relevant Bonds, on or at any time after the sixth Business Day after such Buy-in Period, Seller may give another Buy-in Notice for the purpose of commencing another Buy-in Period for the Relevant Bonds in accordance with the procedures set forth herein. This process may be repeated until the final settlement of the Credit Derivative Transaction.

On the date a Buy-in Price is determined (or as soon as practicable thereafter), Seller will provide notice (which may be by telephone) of the outstanding principal balance of the Relevant Bonds for which Buy-in Prices were determined and the Buy-in Price or Prices therefor. On the third Business Day following such notice, Buyer will be deemed to have Delivered an outstanding principal balance of the Deliverable Obligations specified in the Notice of Physical Settlement for which a Buy-in Price was determined and Seller will pay to Buyer that portion of the Physical Settlement Amount that corresponds to such portion of the Deliverable Obligations, reduced (but not below zero) by the Buy-in Price multiplied by the corresponding outstanding principal balance of the Relevant Bonds for which a Buy-in Price was determined, plus any reasonable brokerage costs incurred by Seller in connection with any purchases by it of the Relevant Bonds as part of the buy-in.

Notices relating to buy-ins shall be subject to the requirements regarding notices set forth in Section 1.10. Unless otherwise agreed by Buyer and Seller, this Section 9.9 shall replace any otherwise applicable buy-in rules.



**Section 9.10. Alternative Procedures Relating to Loans Not Delivered.** If Buyer has not Delivered any Deliverable Obligations specified in the Notice of Physical Settlement that are Loans on or prior to the date that is five Business Days after the Physical Settlement Date (the "Alternative Procedure Start Date"), the following provisions shall apply unless (i) Reference Obligations Only has been specified as the Deliverable Obligation Category in the related Confirmation, (ii) in the case of a Consent Required Loan, "Partial Cash Settlement of Consent Required Loans Applicable" is specified in the related Confirmation (in which case Section 9.4 shall apply), (iii) in the case of an Assignable Loan, "Partial Cash Settlement of Assignable Loans Applicable" is specified in the related Confirmation (in which case Section 9.5 shall apply), (iv) in the case of a Direct Loan Participation, "Partial Cash Settlement of Participations Applicable" is specified in the related Confirmation (in which case Section 9.6 shall apply) or (v) in any case, such failure to Deliver is due to an event described in Section 9.3 (in which case Section 9.3 shall apply):

(a) In the event that the Buyer has failed to obtain the requisite consents to Deliver a Loan specified in the Notice of Physical Settlement and has provided a certificate signed by a Managing Director (or other substantively equivalent title) of the Buyer, which shall certify that Buyer has used reasonable efforts to obtain such consents, at any time following the Alternative Procedure Start Date, Buyer may Deliver, in lieu of all or part of such Loan, any, subject to Section 2.32 or 2.33, Bond that is Transferable and Not Bearer or Loan that is Assignable, in either case selected by Buyer and having on both the Physical Settlement Date and the Delivery Date each of the Deliverable Obligation Characteristics (other than Consent Required Loan or Direct Loan Participation), if any, specified in the related Confirmation and otherwise satisfying the requirements to constitute a Deliverable Obligation (and such instrument shall be deemed specified in the Notice of Physical Settlement).

(b) At any time after the fifteenth Business Day following the Alternative Procedure Start Date, to the extent that there still remains to be Delivered any Deliverable Obligations specified in the Notice of Physical Settlement that are Loans and Buyer has not Delivered any Bond or Loan in lieu thereof under Section 9.10(a), Seller may require Buyer to Deliver, in lieu of all or part of a Loan specified in the Notice of Physical Settlement, any, subject to Section 2.32 or 2.33, Bond that is Transferable and Not Bearer or Loan that is Assignable, in either case selected by Seller and having on both the Physical Settlement Date and the Delivery Date each of the Deliverable Obligation Characteristics (other than Consent Required Loan or Direct Loan Participation), if any, specified in the related Confirmation and otherwise satisfying the requirements to constitute a Deliverable Obligation (and such instrument shall be deemed specified in the Notice of Physical Settlement), so long as (i) Seller identifies a holder (other than Seller or an Affiliate of Seller) of the selected instrument that is ready, willing and able to Deliver such instrument to Buyer at a price (expressed as a percentage) less than the Reference Price and (ii) such instrument may be further Delivered by Buyer to Seller without the consent of any person being required.

## ARTICLE X

### NOVATION PROVISIONS

**Section 10.1. Novation.** Parties may document a Novation Transaction by specifying in a Novation Confirmation that the Novation Transaction is subject to and governed by the Novation Provisions set forth in this Article X and the provisions set forth in the Novation Agreement. "Novation Confirmation" means, with respect to a Novation Transaction, one or more documents and other confirming evidence exchanged between the Transferor, Transferee and Remaining Party or otherwise effective which, taken together, confirm or evidence all of the terms of a Novation Transaction. A form of Novation Confirmation is set forth in Exhibit F.

**Section 10.2. Novation Transaction.** "Novation Transaction" means a transaction in which a Transferor transfers by novation to a Transferee, in which a Transferee accepts the transfer by novation of, and in which the Remaining Party consents to such transfer by novation and acceptance thereof, all of the rights, liabilities, duties and obligations of a Transferor with respect to a Remaining Party under and in respect of the Novated Amount of a Credit Derivative Transaction.

**Section 10.3. Transferor.** "Transferor" means the party which transfers by novation to a Transferee all of its rights, liabilities, duties and obligations with respect to a Remaining Party under and in respect of the Novated Amount of a Credit Derivative Transaction.

**Section 10.4. Transferee.** "Transferee" means the party which accepts by way of novation all of the rights, liabilities, duties and obligations of a Transferor with respect to a Remaining Party under and in respect of the Novated Amount of a Credit Derivative Transaction.

**Section 10.5. Remaining Party.** "Remaining Party" means the party which consents to the Transferor's transfer by novation and the acceptance thereof by the Transferee of all of the Transferor's rights, liabilities, duties and obligations with respect to such party under and in respect of the Novated Amount of a Credit Derivative Transaction.

**Section 10.6. Old Transaction.** "Old Transaction" means the Credit Derivative Transaction between the Transferor and the Remaining Party that is the subject of the novation from the Transferor to the Transferee.

**Section 10.7. New Transaction.** "New Transaction" means the new transaction between the Transferee and the Remaining Party having economic terms (excluding collateral and other credit support arrangements and subject to Section 10.9 below) identical to those of the Old Transaction as more fully described in this Article X and in a Novation Agreement.

**Section 10.8. Old Agreement.** "Old Agreement" means the ISDA Master Agreement, if any, between the Transferor and the Remaining Party to which the Old Transaction was subject.

**Section 10.9. New Agreement.** "New Agreement" means the ISDA Master Agreement between the Transferee and the Remaining Party that governs the relationship between the parties with respect to the New Transaction. If the Transferee and the Remaining Party have not yet executed an ISDA Master Agreement, the following shall be deemed to be included in the Novation

Confirmation: "This Novation Confirmation evidences a complete and binding agreement between Transferee and the Remaining Party as to the terms of the New Transaction to which this Novation Confirmation relates. In addition, the Transferee and the Remaining Party agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of an ISDA Master Agreement, with such modifications as the Transferee and the Remaining Party will in good faith agree. Upon the execution by the Transferee and the Remaining Party of such an agreement, this Novation Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained in or incorporated by reference in that agreement upon its execution will govern this Novation Confirmation except as expressly modified herein. Until the Transferee and the Remaining Party execute and deliver that agreement, this Novation Confirmation, together with all other documents referring to an ISDA Master Agreement (each a "Confirmation") confirming transactions (each a "Transaction") entered into between the Transferee and the Remaining Party (notwithstanding anything to the contrary in a Confirmation), shall supplement, form a part of, and be subject to, an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) if any Confirmation dated prior to the date of the Novation Confirmation refers to that ISDA Master Agreement and otherwise the 2002 ISDA Master Agreement as if the Transferee and the Remaining Party had executed an agreement in such form (but without any Schedule except for the election of the governing law specified in this Novation Confirmation as the governing law and a Termination Currency of euro, if the Novation Confirmation is expressed to be governed by English law, or United States Dollars, if the Novation Confirmation is expressed to be governed by the laws of the State of New York) on the Trade Date of the first such Transaction between the Transferee and the Remaining Party. In the event of any inconsistency between the provisions of that agreement and this Novation Confirmation, this Novation Confirmation will prevail for the purpose of this Novation Transaction."

**Section 10.10. ISDA Master Agreement.** "ISDA Master Agreement" means either the 1992 ISDA Master Agreement (Multicurrency – Cross Border) or the 2002 ISDA Master Agreement, as applicable.

**Section 10.11. Old Confirmation.** "Old Confirmation" means the confirmation between the Transferor and the Remaining Party setting forth the terms and conditions of the Old Transaction.

**Section 10.12. Novated Amount.** "Novated Amount" means the portion of the Fixed Rate Payer Calculation Amount and Floating Rate Payer Calculation Amount of the Old Transaction that is the subject of the Novation Transaction. If the Novated Amount is less than 100% of the Fixed Rate Payer Calculation Amount and Floating Rate Payer Calculation Amount of the Old Transaction, the Old Transaction shall remain in full force and effect but all future payments, deliveries and calculations thereunder shall be based on a Fixed Rate Payer Calculation Amount and Floating Rate Payer Calculation Amount that has been reduced by the relevant Novated Amount.

**Section 10.13. Novation Agreement.** By exchanging a Novation Confirmation, the Transferor, the Transferee and the Remaining Party will be deemed to have entered into a Novation Agreement (the "Novation Agreement") as set forth in Exhibit E, as supplemented by the details and information set forth in the Novation Confirmation and this Article X.

EXHIBIT A to 2003 ISDA Credit Derivatives Definitions

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[Headed paper of Party A]

Date:

To: [Name and Address or Facsimile Number of Party B]

From: [Party A]

Re: Credit Derivative Transaction

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Dear \_\_\_\_\_:

The purpose of this [letter] (this "Confirmation") is to confirm the terms and conditions of the Credit Derivative Transaction entered into between us on the Trade Date specified below (the "Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 2003 ISDA Credit Derivatives Definitions (the "Credit Derivatives Definitions"), as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the Credit Derivatives Definitions and this Confirmation, this Confirmation will govern.

[This Confirmation supplements, forms a part of, and is subject to, the ISDA Master Agreement dated as of [date], as amended and supplemented from time to time (the "Agreement"), between you and us. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.]<sup>1</sup>

The terms of the Transaction to which this Confirmation relates are as follows:

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THE FOOTNOTES TO THIS CONFIRMATION ARE PROVIDED FOR CLARIFICATION ONLY AND DO NOT CONSTITUTE ADVICE AS TO THE STRUCTURING OR DOCUMENTATION OF A CREDIT DERIVATIVE TRANSACTION.

ISDA has not undertaken to review all applicable laws and regulations of any jurisdiction in which the Credit Derivatives Definitions may be used. Therefore, parties are advised to consider the application of any relevant jurisdiction's regulatory, tax, accounting, exchange or other requirements that may exist in connection with the entering into and documenting of a privately negotiated credit derivative transaction.

<sup>1</sup> Include if applicable. If the parties have not yet executed, but intend to execute, an ISDA Master Agreement include, instead of this paragraph, the following: "This Confirmation evidences a complete and binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. In addition, you and we agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of an ISDA Master Agreement, with such modifications as you and we will in good faith agree. Upon the execution by you and us of such an agreement, this Confirmation will supplement, form part of, and be subject to that agreement. All provisions contained in or incorporated by reference in that agreement upon its execution will govern this Confirmation except as expressly modified below. Until we execute and deliver that agreement, this Confirmation, together with all other documents referring to an ISDA Master Agreement (each a "Confirmation") confirming transactions (each a "Transaction") entered into between us (notwithstanding anything to the contrary in a Confirmation), shall supplement, form a part of, and be subject to, an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) if any Confirmation dated prior to the date of this Confirmation refers to that ISDA Master Agreement and otherwise the 2002 ISDA Master Agreement as if we had executed an agreement in such form (but without any Schedule except for the election of [English Law][the laws of the State of New York] as the governing law and [specify currency] as the Termination Currency) on the Trade Date of the first such Transaction between us. In the event of any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction."

1. General Terms:

Trade Date: [ ]

Effective Date: [ ]

Scheduled Termination Date: [ ]

Floating Rate Payer: [Party A][Party B] (the "Seller").

Fixed Rate Payer: [Party A][Party B] (the "Buyer").

Calculation Agent:<sup>2</sup> [ ]

Calculation Agent City:<sup>3</sup> [ ]

Business Day:<sup>4</sup> [ ]

Business Day Convention: [Following][Modified Following][Preceding] (which, subject to Sections 1.4 and 1.6 of the Credit Derivatives Definitions, shall apply to any date referred to in this Confirmation that falls on a day that is not a Business Day<sup>5</sup>).

Reference Entity: [ ]

[Reference Obligation(s):]<sup>6</sup> [ ]

[The obligation[s] identified as follows:

Primary Obligor: [ ]

Guarantor: [ ]

Maturity: [ ]

Coupon: [ ]

CUSIP/ISIN: [ ]

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2 If the Calculation Agent is a third party, the parties may wish to consider any documentation necessary to confirm its undertaking to act in that capacity. If a person is not specified, the Credit Derivatives Definitions provide that the Calculation Agent will be the Seller.

3 If a city is not specified, the Credit Derivatives Definitions provide that the Calculation Agent City will be the city in which the office through which the Calculation Agent is acting for purposes of the Credit Derivative Transaction is located.

4 The Credit Derivatives Definitions provide a fallback to days on which commercial banks and foreign exchange markets are generally open to settle payments in the jurisdiction of the currency of the Floating Rate Payer Calculation Amount.

5 The Credit Derivatives Definitions provide a fallback to the Following Business Day Convention.

6 Specify if required. A Reference Obligation must be specified for Credit Derivative Transactions to which Cash Settlement applies. If a Reference Obligation is specified for Credit Derivative Transactions to which Physical Settlement applies then, subject to the second paragraph of Section 2.20(b)(i) and Sections 2.32(a) and 2.33(a), such Reference Obligation is a Deliverable Obligation even though at the time of delivery it does not fall into the Obligation Category or lacks any or all Deliverable Obligation Characteristics.

All Guarantees: [Applicable][Not Applicable]

Reference Price: [ %]<sup>7</sup>

2. Fixed Payments:

[Fixed Rate Payer Calculation Amount:<sup>8</sup> [ ]]

[Fixed Rate Payer Period End Date:<sup>9</sup> [ ]]

Fixed Rate Payer Payment Date[s]: [ ], [ ], [ ] and [ ]

[Fixed Rate: [ ]]<sup>10</sup>

[Fixed Rate Day Count Fraction:<sup>11</sup> [ ]]

[Fixed Amount: [ ]]

3. Floating Payment:

Floating Rate Payer Calculation Amount:<sup>12</sup> [ ]

Conditions to Settlement: Credit Event Notice

Notifying Party: Buyer [or Seller]

[Notice of Physical Settlement]<sup>13</sup>

[Notice of Publicly Available Information Applicable]<sup>14</sup>

[Public Source(s):[ ]]<sup>15</sup>

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7 If a percentage is not so specified, the Credit Derivatives Definitions provide that the Reference Price will be one hundred per cent.

8 If an amount is not specified, the Credit Derivatives Definitions provide that the Fixed Rate Payer Calculation Amount will be the Floating Rate Payer Calculation Amount.

9 If a date is not specified, the Credit Derivatives Definitions provide that the Fixed Rate Payer Period End Date will be each date specified in the related Confirmation as a Fixed Rate Payer Payment Date.

10 The Credit Derivatives Definitions provide that the Fixed Rate means a rate, expressed as a decimal, equal to the per annum rate specified here.

11 If a Fixed Rate Day Count Fraction is not specified, the Credit Derivatives Definitions provide a fallback to Actual/360 as the Fixed Rate Day Count Fraction.

12 Specify an amount or, for amortizing Transactions, refer to amounts listed in an amortization schedule.

13 Notice of Physical Settlement is a required Condition to Settlement in respect of Credit Derivative Transactions to which Physical Settlement is applicable. It is not applicable in relation to Credit Derivative Transactions to which Cash Settlement is applicable.

14 If Notice of Publicly Available Information is intended to be a Condition to Settlement, the parties should include a reference to it here.

15 If Notice of Publicly Available Information has been selected by the parties and a Public Source is not specified, the Credit Derivatives Definitions provide that the Public Sources will be Bloomberg Service, Dow Jones Telerate Service, Reuter Monitor Money Rates Services, Dow Jones News Wire, Wall Street Journal, New York Times, Nihon Keizai Shinbun, Asahi Shinbun, Yomiuri Shinbun, Financial Times, La Tribune, Les Echos and The Australian Financial Review (and successor publications), the main source(s) of business news in the

[Specified Number:[ ]]<sup>16</sup>

Credit Events: The following Credit Event[s] shall apply to this Transaction:

[Bankruptcy]

[[Failure to Pay]

[Grace Period Extension Applicable]<sup>17</sup>

[Grace Period: ]<sup>18</sup>

Payment Requirement: [ ]<sup>19</sup>

[Obligation Default]

[Obligation Acceleration]

[Repudiation/Moratorium]

[Restructuring]

[[Restructuring Maturity Limitation and Fully Transferable Obligation: [Applicable]<sup>20</sup>

[[Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation: [Applicable]<sup>21</sup>

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jurisdiction in which the Reference Entity is organized and any other internationally recognized published or electronically displayed news sources.

<sup>16</sup> If Notice of Publicly Available Information has been selected by the parties and a number of Public Sources is not specified, the Credit Derivatives Definitions provide that the Specified Number will be two.

<sup>17</sup> Specify whether the parties intend Grace Period Extension to apply. If Grace Period Extension is not specified here as being applicable, Grace Period Extension will not apply to the Credit Derivative Transaction.

<sup>18</sup> If Grace Period Extension is applicable, the parties may also wish to specify the number of days in the Grace Period. Parties should specify whether the Grace Period is to be measured in calendar days. If a number of days is not so specified, Grace Period will be the lesser of the applicable grace period with respect to the relevant Obligation and thirty calendar days. If at the later of the Trade Date and the date as of which an Obligation is issued or incurred, no grace period with respect to payments or a grace period with respect to payments of less than three Grace Period Business Days is applicable under the terms of that Obligation, a Grace Period of three Grace Period Business Days shall be deemed to apply to that Obligation. Unless Grace Period Extension is specified as applicable to a Credit Derivative Transaction, this deemed Grace Period will expire no later than the Scheduled Termination Date.

<sup>19</sup> Payment Requirement is relevant to the Failure to Pay Credit Event. If a Payment Requirement is not specified, the Credit Derivatives Definitions provide that the Payment Requirement will be USD 1,000,000 or its equivalent in the relevant Obligation Currency as of the occurrence of the relevant Failure to Pay.

<sup>20</sup> Specify whether the parties intend Restructuring Maturity Limitation and Fully Transferable Obligation, as set forth in Section 2.32 of the Credit Derivatives Definitions, to apply. If Restructuring Maturity Limitation and Fully Transferable Obligation are specified as applicable, the Restructuring Maturity Limitation Date is the date that is the earlier of 30 months following the Restructuring Date and the latest final maturity date of any Restructured Bond or Loan (but in no event a date earlier than the Scheduled Termination Date or a date later than 30 months following the Scheduled Termination Date) and only Fully Transferable Obligations may constitute Deliverable Obligations. The parties cannot specify that Restructuring Maturity Limitation and Fully Transferable Obligation *and* Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation both apply. If Restructuring Maturity Limitation is not specified as being applicable, Restructuring Maturity Limitation will not apply to the Credit Derivative Transaction.

<sup>21</sup> Specify whether the parties intend Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation, as set forth in Section 2.33 of the Credit Derivatives Definitions, to apply. If Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation are specified as applicable, the Modified Restructuring Maturity Limitation Date is the later of (x) 60 months for a Restructured Bond or Loan (and 30 months for other Deliverable Obligations) following the Restructuring Date and (y) the Scheduled Termination Date, and only Conditionally Transferable Obligations may constitute Deliverable Obligations. The parties cannot specify that Restructuring Maturity

[[Multiple Holder Obligation:]]<sup>22</sup> [Applicable]]

[Default Requirement: [ ]]<sup>23</sup>

Obligation(s):

<i>Obligation Category (Select only one):</i>	<i>Obligation Characteristics (Select all that apply):</i>
<input type="checkbox"/> Payment	<input type="checkbox"/> Not Subordinated
<input type="checkbox"/> Borrowed Money	<input type="checkbox"/> Specified Currency: [ ] <sup>25</sup>
<input type="checkbox"/> Reference Obligations Only <sup>24</sup>	<input type="checkbox"/> Not Sovereign Lender
<input type="checkbox"/> Bond	<input type="checkbox"/> Not Domestic Currency [Domestic Currency means: [ ]] <sup>26</sup>
<input type="checkbox"/> Loan	<input type="checkbox"/> Not Domestic Law
<input type="checkbox"/> Bond or Loan	<input type="checkbox"/> Listed
	<input type="checkbox"/> Not Domestic Issuance

[and:]

[Specify any other obligations of a Reference Entity.]

[Excluded Obligations:]]<sup>27</sup> [ ]

4. Settlement Terms:

Settlement Method: [Cash Settlement] [Physical Settlement]

[[Terms Relating to Cash Settlement:]]<sup>28</sup>

Limitation and Fully Transferable Obligation *and* Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation both apply. If Modified Restructuring Maturity Limitation is not specified as being applicable, Modified Restructuring Maturity Limitation will not apply to the Credit Derivative Transaction.

22 Unless Not Applicable is specified, the Credit Derivatives Definitions provide that Restructurings are limited to Multiple Holder Obligations.

23 Default Requirement is relevant to the Obligation Acceleration, Obligation Default, Repudiation/Moratorium and Restructuring Credit Events. If a Default Requirement is not specified, the Credit Derivatives Definitions provide that the Default Requirement will be USD 10,000,000 or its equivalent in the relevant Obligation Currency as of the occurrence of the relevant Credit Event.

24 If Reference Obligations Only is specified as the Obligation Category, no Obligation Characteristics should be specified.

25 Specify Currency. The Credit Derivatives Definitions provide that, if no currency is so specified, Specified Currency means the lawful currencies of any of Canada, Japan, Switzerland, the United Kingdom and the United States of America and the euro (and any successor currency to any such currency). The Credit Derivatives Definitions provide that these currencies may be referred to collectively in a Confirmation as the "Standard Specified Currencies".

26 If no currency is specified, the Credit Derivatives Definitions provide that Domestic Currency will be the lawful currency and any successor currency of (a) the relevant Reference Entity, if the Reference Entity is a Sovereign, or (b) the jurisdiction in which the relevant Reference Entity is organized, if the Reference Entity is not a Sovereign. In no event shall Domestic Currency include any successor currency if such successor currency is the lawful currency of any of Canada, Japan, Switzerland, the United Kingdom or the United States of America or the euro (or any successor currency to any such currency).

27 Unless specified here as an Excluded Obligation, the Reference Obligation will be an Obligation.

28 Include if Cash Settlement applies.



[Valuation Date:]<sup>29</sup> [Single Valuation Date:  
[ ] Business Days]<sup>30</sup>

[Multiple Valuation Dates:  
[ ] Business Days<sup>31</sup>; and  
each [ ] Business Days thereafter<sup>32</sup>  
Number of Valuation Dates: [ ]<sup>33</sup>

[Valuation Time: ]<sup>34</sup>

[Quotation Method: [Bid][Offer][Mid-market]]<sup>35</sup>

[Quotation Amount: [ ] [Representative Amount]]<sup>36</sup>

[Minimum Quotation Amount: ]<sup>37</sup>

[Dealer(s): ]<sup>38</sup>

[Settlement Currency: ]<sup>39</sup>

[Cash Settlement Date: [ ] Business Days]<sup>40</sup>

[Cash Settlement Amount: ]<sup>41</sup>

[Quotations: [Include Accrued Interest][Exclude Accrued Interest]]<sup>42</sup>

29 Include if the Cash Settlement Amount is not a fixed amount. The Credit Derivatives Definitions provide that if neither Single Valuation Date nor Multiple Valuation Dates is specified here, Single Valuation Date will apply.

30 If the number of Business Days is not specified, the Credit Derivatives Definitions provide that this will be five Business Days.

31 If the number of Business Days is not specified, the Credit Derivatives Definitions provide that this will be five Business Days.

32 If the number of Business Days is not specified, the Credit Derivatives Definitions provide that this will be five Business Days.

33 If the number of Valuation Dates is not specified, the Credit Derivatives Definitions provide that there will be five Valuation Dates.

34 If no time is specified, the Credit Derivatives Definitions provide that the Valuation Time will be 11:00 a.m. in the principal trading market for the Reference Obligation.

35 If no Quotation Method is specified, the Credit Derivatives Definitions provide that Bid shall apply.

36 Specify either an amount in a currency or Representative Amount. If no Quotation Amount is specified, the Credit Derivatives Definitions provide that the Quotation Amount will be the Floating Rate Payer Calculation Amount.

37 If no amount is specified, the Credit Derivatives Definitions provide that the Minimum Quotation Amount will be the lower of (i) USD 1,000,000 (or its equivalent in the relevant Obligation Currency) and (ii) the Quotation Amount.

38 Specify the Dealers. If no Dealers are specified here, the Calculation Agent will select the Dealers in consultation with the parties.

39 If no currency is specified, the Credit Derivatives Definitions provide that the Settlement Currency will be the currency of denomination of the Floating Rate Payer Calculation Amount.

40 If a number of Business Days is not specified, the Credit Derivatives Definitions specify three Business Days.

41 If no amount is so specified, the Credit Derivatives Definitions provide that the Cash Settlement Amount will be the greater of (a) (i) Floating Rate Payer Calculation Amount multiplied by (ii) the Reference Price minus the Final Price and (b) zero.

42 If neither Include Accrued Interest nor Exclude Accrued Interest is specified with respect to Quotations, the Credit Derivatives Definitions provide that the Calculation Agent will determine, after consultation with the parties, based on then current market practice in the market of the Reference Obligation, whether such Quotations shall include or exclude accrued but unpaid interest.

[Valuation Method:<sup>43</sup>                    [Market] [Highest]<sup>44</sup>  
   [Average Market] [Highest] [Average Highest]<sup>45</sup>  
   [Blended Market] [Blended Highest]<sup>46</sup>  
   [Average Blended Market] [Average Blended Highest]<sup>47</sup>]

[Terms Relating to Physical Settlement:]<sup>48</sup>

[Physical Settlement Period:    [                    ] Business Days]<sup>49</sup>

[Deliverable Obligations:        [Include Accrued Interest] [Exclude Accrued Interest]<sup>50</sup>

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43            Include if the Cash Settlement Amount is not a fixed amount.

44            One of these Valuation Methods may be specified for a Credit Derivative Transaction with only one Reference Obligation and only one Valuation Date. If no Valuation Method is specified in such circumstances, the Credit Derivatives Definitions provide that the Valuation Method shall be Highest.

45            One of these three Valuation Methods may be specified for a Credit Derivative Transaction with only one Reference Obligation and more than one Valuation Date. If no Valuation Method is specified in such circumstances, the Credit Derivatives Definitions provide that Average Highest shall apply.

46            One of these Valuation Methods may be specified for a Credit Derivative Transaction with more than one Reference Obligation and only one Valuation Date. If no Valuation Method is specified in such circumstances, the Credit Derivatives Definitions provide that Blended Highest shall apply.

47            One of these Valuation Methods may be specified for a Credit Derivative Transaction with more than one Reference Obligation and more than one Valuation Date. If no Valuation Method is specified in such circumstances, the Credit Derivatives Definitions provide that Average Blended Highest shall apply.

48            Include if Physical Settlement applies. Subject to contrary agreement between the parties, the Partial Cash Settlement Terms contained in the Credit Derivatives Definitions apply automatically in the context of events rendering it impossible or illegal for Buyer to Deliver or for Seller to accept Delivery of the Deliverable Obligations on or prior to the Latest Permissible Physical Settlement Date. This should be distinguished from the Partial Cash Settlement of Consent Required Loans, Partial Cash Settlement of Assignable Loans and Partial Cash Settlement of Participations provisions, which are elective. If applicable for any reason, the Partial Cash Settlement Terms will apply in the form prescribed in the Credit Derivatives Definitions unless contrary provision is made by the parties in the Confirmation.

49            If a number of Business Days is not specified, the Credit Derivatives Definitions provide that the Physical Settlement Period will be, with respect to a Deliverable Obligation, the maximum number of Business Days for settlement in accordance with then current market practice of such Deliverable Obligation, as determined by the Calculation Agent after consultation with the parties.

50            Specify whether, in respect of Deliverable Obligations with an outstanding principal balance, the Deliverable Obligation is to include or exclude accrued but unpaid interest. If neither "Include Accrued Interest" nor "Exclude Accrued Interest" is specified here, the Credit Derivatives Definitions provide that the Deliverable Obligations shall exclude accrued but unpaid interest.

Deliverable Obligations:

<i>Deliverable Obligation Category (Select only one):</i>	<i>Deliverable Obligation Characteristics (Select all that apply):</i>
<input type="checkbox"/> Payment <input type="checkbox"/> Borrowed Money <input type="checkbox"/> Reference Obligations Only <sup>51</sup> <input type="checkbox"/> Bond <input type="checkbox"/> Loan <input type="checkbox"/> Bond or Loan	<input type="checkbox"/> Not Subordinated <input type="checkbox"/> Specified Currency: [            ] <sup>52</sup> <input type="checkbox"/> Not Sovereign Lender <input type="checkbox"/> Not Domestic Currency [Domestic Currency means: [    ]] <sup>53</sup> <input type="checkbox"/> Not Domestic Law <input type="checkbox"/> Listed <input type="checkbox"/> Not Contingent <input type="checkbox"/> Not Domestic Issuance <input type="checkbox"/> Assignable Loan <input type="checkbox"/> Consent Required Loan <input type="checkbox"/> Direct Loan Participation <input type="checkbox"/> Qualifying Participation Seller: [    ] <sup>54</sup> <input type="checkbox"/> Transferable <input type="checkbox"/> Maximum Maturity [            ] <sup>55</sup> <input type="checkbox"/> Accelerated or Matured <input type="checkbox"/> Not Bearer

[and:]

[Specify any other obligations of a Reference Entity.]

[Excluded Deliverable Obligations:]<sup>56</sup>

[            ]

51 If Reference Obligations Only is specified as the Deliverable Obligation Category, no Deliverable Obligation Characteristics should be specified.

52 Specify Currency. The Credit Derivatives Definitions provide that, if no currency is so specified, Specified Currency means the lawful currencies of any of Canada, Japan, Switzerland, the United Kingdom and the United States of America and the euro (and any successor currency to any such currency). The Credit Derivatives Definitions provide that these currencies may be referred to collectively in a Confirmation as the "Standard Specified Currencies".

53 If no currency is specified, the Credit Derivatives Definitions provide that Domestic Currency will be the lawful currency and any successor currency of (a) the relevant Reference Entity, if the Reference Entity is a Sovereign, or (b) the jurisdiction in which the relevant Reference Entity is organized, if the Reference Entity is not a Sovereign. In no event shall Domestic Currency include any successor currency if such successor currency is the lawful currency of any of Canada, Japan, Switzerland, the United Kingdom or the United States of America or the euro (or any successor currency to any such currency).

54 If Direct Loan Participation is specified as a Deliverable Obligation Characteristic, specify any requirements for the Qualifying Participation Seller here. If requirements are not so specified, the Credit Derivatives Definitions provide that there shall be no Qualifying Participation Seller, with the result that only a participation pursuant to a participation agreement between the Buyer and Seller will constitute a Direct Loan Participation.

55 Specify maximum period to maturity from the Physical Settlement Date.

56 Unless specified as an Excluded Deliverable Obligation, the Reference Obligation will, subject to the second paragraph of Section 2.20(b)(i) and Sections 2.32(a) and 2.33(a), be a Deliverable Obligation even though at the time of delivery it does not fall into the Obligation Category or lacks any or all Deliverable Obligation Characteristics.

[Partial Cash Settlement of Consent Required Loans Applicable]<sup>57</sup>

[Partial Cash Settlement of Assignable Loans Applicable]<sup>58</sup>

[Partial Cash Settlement of Participations Applicable]<sup>59</sup>

Escrow: [Applicable][Not Applicable]

5. Notice and Account Details:

Telephone and/or  
Facsimile Numbers and  
Contact Details for Notices:

Buyer: [ ]  
Seller: [ ]

Account Details

Account Details of  
Buyer: [ ]

Account Details of Seller: [ ]

[6. Offices<sup>60</sup>

Seller: [ ]

Buyer: [ ]]

---

57 Include if the parties intend that the Partial Cash Settlement Terms are to be applicable in relation to Consent Required Loans.  
58 Include if the parties intend that the Partial Cash Settlement Terms are to be applicable in relation to Assignable Loans.  
59 Include if the parties intend that the Partial Cash Settlement Terms are to be applicable in relation to Direct Loan Participations.  
60 If necessary, specify the Offices through which the parties are acting for the purposes of the Credit Derivative Transaction.

*Closing*

Please confirm your agreement to be bound by the terms of the foregoing by executing a copy of this Confirmation and returning it to us [by facsimile].

Yours sincerely,

[PARTY A]

By: \_\_\_\_\_  
Name:  
Title:

Confirmed as of the date  
first above written:

[PARTY B]

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT B to 2003 ISDA Credit Derivatives Definitions

[Date]

[Counterparty Address and  
Contact Information]

[Non-party Calculation Agent Address  
and Contact Information]

**CREDIT EVENT NOTICE  
[AND  
NOTICE OF PUBLICLY AVAILABLE INFORMATION]<sup>61</sup>**

Credit Derivative Transaction Details: [Trade Date], [Effective Date], [Reference Entity],  
[Basket of Credit Derivative Transactions]

Reference is made to the Credit Derivative Transaction described above (the "Transaction") between [ ], as Seller, and [ ], as Buyer. Capitalized terms used and not otherwise defined in this letter shall have the meanings given them in the confirmation of the Transaction.

This letter is our Credit Event Notice to you that a [insert type] Credit Event occurred with respect to [insert name] on or about [insert date], when [describe Credit Event].

[This letter also comprises our Notice of Publicly Available Information with respect to this Credit Event. Accordingly, we provide the Publicly Available Information attached hereto.]

Nothing in this letter shall be construed of a waiver of any rights we may have with respect to the Transaction.

Sincerely,

[insert name]

---

Name:

Title:

---

<sup>61</sup> The bracketed words in the Notice's title and the third paragraph of the Notice need only be included when Notice of Publicly Available Information is specified as Applicable in the related Confirmation.

EXHIBIT C to 2003 ISDA Credit Derivatives Definitions

[Date]

[Counterparty Address and  
Contact Information]

[Non-party Calculation Agent Address  
and Contact Information]

**NOTICE OF PHYSICAL SETTLEMENT**

Credit Derivative Transaction Details: [Trade Date], [Effective Date], [Reference Entity],  
[Basket of Credit Derivative Transactions]

Reference is made to the Credit Derivative Transaction described above (the "Transaction") between [ ], as Seller, and [ ], as Buyer. Reference is also made to the Credit Event Notice [and Notice of Publicly Available Information]<sup>62</sup> dated [insert date], previously delivered to you on [insert date].

This letter constitutes a Notice of Physical Settlement. Any capitalized term not otherwise defined in this letter will have the meaning, if any, assigned to such term in the confirmation of the Transaction or, if no meaning is specified therein, in the 2003 ISDA Credit Derivatives Definitions.

We hereby confirm that we will settle the Transaction and require performance by you in accordance with the Physical Settlement Method. Subject to the terms of the Transaction, we will deliver to you on or before the Physical Settlement Date, [[currency/amount]] [outstanding principal balance] [Due and Payable Amount]] of the following Deliverable Obligations:

[describe the Deliverable Obligations to be Delivered, including the outstanding principal balance or Due and Payable Amount for each such Deliverable Obligation and, if available, the CUSIP or ISIN number (if such identifying number is not available, the rate and tenor of the Deliverable Obligation)].

Yours sincerely,

[insert name]

---

<sup>62</sup> The bracketed language need only be included when Notice of Publicly Available Information is specified as Applicable in the related Confirmation.

EXHIBIT D to 2003 ISDA Credit Derivatives Definitions

[Date]

[Counterparty Address and  
Contact Information]

[Non-party Calculation Agent Address  
and Contact Information]

**REPUDIATION/MORATORIUM EXTENSION NOTICE  
[AND  
NOTICE OF PUBLICLY AVAILABLE INFORMATION]<sup>63</sup>**

Credit Derivative Transaction Details: [Trade Date], [Effective Date], [Reference Entity],  
[Basket of Credit Derivative Transactions]

Reference is made to the Credit Derivative Transaction described above (the "Transaction") between [ ], as Seller, and [ ], as Buyer. Capitalized terms used and not otherwise defined in this letter shall have the meanings given them in the confirmation of the Transaction.

This letter is our Repudiation/Moratorium Extension Notice to you that a Potential Repudiation/Moratorium occurred with respect to [insert name] on [insert date], when [describe Potential Repudiation/Moratorium].

[This letter also comprises our Notice of Publicly Available Information with respect to this Potential Repudiation/Moratorium. Accordingly, we provide the Publicly Available Information attached hereto.]

Nothing in this letter shall be construed of a waiver of any rights we may have with respect to the Transaction.

Sincerely,

[insert name]

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
<sup>63</sup> The bracketed words in the Notice's title and the third paragraph of the Notice need only be included when Notice of Publicly Available Information is specified as Applicable in the related Confirmation.



EXHIBIT E to 2003 ISDA Credit Derivatives Definitions



International Swaps and Derivatives Association, Inc.

**NOVATION AGREEMENT**

Dated as of the Novation Date (as set forth in the Novation Confirmation) among the Remaining Party, the Transferor and the Transferee (in each case as defined in the Novation Confirmation).

This Novation Agreement is subject to, and hereby incorporates by reference, the Novation Provisions (the "Novation Provisions") contained in Article X of the 2003 ISDA Credit Derivatives Definitions (the "Definitions"), and any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Definitions and the Novation Provisions. From time to time parties may enter into Novation Transactions by exchanging a Novation Confirmation. Each such Novation Confirmation shall be deemed to form part of this Novation Agreement.

With effect from and including the Novation Date the Transferor wishes to transfer by novation to the Transferee, and the Transferee wishes to accept the transfer by novation of, and the Remaining Party wishes to consent to such transfer by novation and acceptance thereof of, all the rights, liabilities, duties and obligations of the Transferor with respect to the Remaining Party under and in respect of the Novated Amount of the Old Transaction, with the effect that the Remaining Party and the Transferee enter into a new transaction (a "New Transaction") between them having economic terms (excluding collateral and other credit support arrangements and subject to Section 2(c) below) identical to those of the Old Transaction to the extent of the Novated Amount, as more particularly described below.

The Remaining Party wishes to accept the Transferee as its sole counterparty with respect to the New Transaction.

The Transferor and the Remaining Party wish to have released and discharged, as a result and to the extent of the transfer described above, their respective obligations under and in respect of the Old Transaction.

Accordingly, the parties agree as follows: ---

**1. Definitions.**

Terms defined in the 2002 ISDA Master Agreement (Multicurrency-Cross Border) as published by the International Swaps and Derivatives Association, Inc. (the "ISDA Master Agreement") shall have the meaning as used in such ISDA Master Agreement, unless otherwise provided herein.

**2. Transfer, Release, Discharge and Undertakings.**

With effect from and including the Novation Date and in consideration of the mutual representations, warranties and covenants contained in this Novation Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties):

- (a) the Remaining Party and the Transferor are each released and discharged from further obligations to each other with respect to the Novated Amount of the Old Transaction and their respective rights against each other thereunder are cancelled, provided that such release and discharge shall not affect any rights, liabilities or obligations of the Remaining Party or the Transferor with respect to (i) any portion of the Old Transaction in excess of the Novated Amount and (ii) payments or other obligations due and payable or due

to be performed prior to the Novation Date, and all such payments and obligations shall be paid or performed by the Remaining Party or the Transferor in accordance with the terms of the Old Transaction;

(b) in respect of the New Transaction, the Remaining Party and the Transferee each undertake liabilities and obligations towards the other and acquire rights against each other identical in their terms to the economic terms (excluding collateral and other credit support arrangements and subject to Section 2(c) below) of the Old Transaction, to the extent of the Novated Amount, including any rights in respect of Credit Events occurring on or prior to the Novation Date (and, for the avoidance of doubt, as if the Transferee were the Transferor and with the Remaining Party remaining the Remaining Party, save for any rights, liabilities or obligations of the Remaining Party or the Transferor with respect to payments or other obligations due and payable or due to be performed prior to the Novation Date);

(c) the New Transaction shall be governed by and form part of the New Agreement and the relevant Old Confirmation which, in conjunction and as deemed modified to be consistent with this Novation Agreement, shall be deemed to be a Confirmation between the Remaining Party and the Transferee; and

(d) any fees payable by the Transferor or the Transferee in connection with the transfer by novation hereunder shall be subject to a separate agreement between such parties.

### **3. Representations and Warranties.**

(a) On the Novation Date:

(i) Each of the parties makes to each of the other parties those representations and warranties set forth in Section 3(a) of the ISDA Master Agreement with references in such Section to "this Agreement" or "any Credit Support Document" being deemed references to this Novation Agreement alone (including, for the avoidance of doubt, the relevant Novation Confirmation).

(ii) The Remaining Party and the Transferor each makes to the other, and the Remaining Party and the Transferee each makes to the other, the representation set forth in Section 3(b) of the ISDA Master Agreement, in each case with respect to the Old Agreement or the New Agreement, as the case may be, and taking into account the parties entering into and performing their obligations under this Novation Agreement.

(iii) Each of the Transferor and the Remaining Party represents and warrants to each other and to the Transferee that:

(A) it has made no prior transfer (whether by way of security or otherwise) of any interest or obligation in respect of the Novated Amount of the Old Transaction;

(B) as of the Novation Date, all obligations of the Transferor and the Remaining Party under the Old Transaction required to be performed prior to the Novation Date have been fulfilled;

(C) neither the Transferor nor the Remaining Party has Delivered any Deliverable Obligations or made any payments in connection with the Settlement Method applicable to the Old Transaction; and

(D) unless otherwise specified in the Novation Confirmation, no Credit Event Notice, Notice of Publicly Available Information or Notice of Physical Settlement has been delivered by or to the Transferor or the Remaining Party.

(iv) Each of the Transferor, the Remaining Party and the Transferee represent and warrant to each other that neither the other parties nor their respective Affiliates have made, as of the Novation Date, any representation whatsoever with respect to the Reference Entity, any Reference

Obligation, any Obligation, any Deliverable Obligation, any Underlying Obligor or any Underlying Obligation on which it is relying or is entitled to rely.

**4. Counterparts.**

This Novation Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

**5. Amendments.**

No amendment, modification or waiver in respect of this Novation Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

**6. (a) Governing Law.**

This Novation Agreement will be governed by and construed in accordance with the laws specified in the Novation Confirmation.

**(b) Jurisdiction.**

The terms of Section 13(b) of the ISDA Master Agreement shall apply to this Novation Agreement with references in such Section to "this Agreement" being deemed references to this Novation Agreement alone.

EXHIBIT F to 2003 ISDA Credit Derivatives Definitions

Novation Confirmation

[Headed paper of Party A]<sup>64</sup>

Date:

To: [Name and Address or Facsimile Number of Party B and Party C]

From: [Party A]

Re: Novation Transaction

---

Dear \_\_\_\_\_:

The purpose of this [facsimile][letter] is to confirm the terms and conditions of the Novation Transaction entered into between the parties on the Novation Date specified below.

[A copy of the Old Confirmation relating to the Old Transaction is attached.]<sup>65</sup>

The definitions and provisions contained in Article X of the 2003 ISDA Credit Derivatives Definitions (the “Novation Provisions”), as published by the International Swaps and Derivatives Association, Inc., are incorporated in this Novation Confirmation. In the event of any inconsistency between the Novation Provisions and this Novation Confirmation, this Novation Confirmation will govern. This Novation Confirmation is subject to the provisions set forth in the Novation Agreement attached as Exhibit E to the 2003 ISDA Credit Derivatives Definitions. In the event of any inconsistency between the Novation Agreement and this Novation Confirmation, the provisions set forth in this Novation Confirmation will govern.

The terms of the Old Transaction to which this Novation Confirmation relates and the other novation terms are as follows:

Novation Date:  
Novated Amount:  
Transferor:  
Transferee:  
Remaining Party:  
Trade Date of Old Transaction:  
Fixed Rate Payer and Floating Rate Payer  
Calculation Amounts of Old Transaction:

---

<sup>64</sup> As the Novation Agreement is a three-party arrangement, there may be some concern about which of the three parties is to draft the document. A convention followed by some in order to avoid disagreements is to allocate drafting responsibilities to the Transferee.

<sup>65</sup> The provision of the Old Confirmation relating to the Old Transaction is optional. Industry participants are advised to exercise care in using Old Confirmations as the agreed record of the terms of the credit derivative transactions to be novated, where those Confirmations include terms beyond those usually considered necessary in relation to the particular credit derivative transactions to be documented.

The initial Fixed Rate Payer Calculation Period with respect to the Novated Amount under the Novated Transaction shall commence on and include the:

Reference Entity:

Scheduled Termination Date:

[Transferee Ref. No.:]

[Transferor Ref. No.:]

[Remaining Party Ref. No.:]

[Governing Law of ISDA Form Governing New Transaction:]

[Credit Event Notice Delivered Under Old Transaction and Deemed Delivered Under New Transaction:] [Applicable][Not Applicable]

[Notice of Publicly Available Information Delivered Under Old Transaction and Deemed Delivered Under New Transaction:] [Applicable][Not Applicable]

[Notice of Physical Settlement Delivered Under Old Transaction, a copy of which is attached:] [Applicable][Not Applicable]

[Notice Information:]

[Account Information:]

The governing law of the Novation Agreement shall be the laws of [England] [the State of New York (without reference to choice of law doctrine)].

Please confirm your acceptance to be bound by this Novation Confirmation as of the Novation Date by executing a copy of this Novation Confirmation and returning it to us [by facsimile].

.....  
(Name of Remaining Party)

By: .....  
Name:  
Title:  
Date:

.....  
(Name of Transferor)

By: .....  
Name:  
Title:  
Date:

.....  
(Name of Transferee)

By: .....  
Name:  
Title:  
Date:

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