COMMENTARY ON THE
2001 ISDA CROSS-AGREEMENT BRIDGE

This note will explain the provisions set forth in the 2001 ISDA Cross-Agreement Bridge (the "Bridge") and highlight some of the benefits of the approach taken by the Bridge.

THIS NOTE DOES NOT PURPORT TO BE (AND SHOULD NOT BE CONSIDERED TO BE) A GUIDE TO, OR EXPLANATION OF, ALL ISSUES OR CONSIDERATIONS RELEVANT IN DOCUMENTING A PARTICULAR CONTRACTUAL RELATIONSHIP. PARTIES SHOULD, THEREFORE, CONSULT THEIR LEGAL ADVISORS AND ANY OTHER ADVISORS THEY DEEM APPROPRIATE PRIOR TO USING THE BRIDGE. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH THE BRIDGE OR ANY OTHER ISDA DOCUMENTATION MAY BE PUT.

1. General Considerations. The Bridge was developed by a working group of ISDA member institutions. It is intended to provide parties to an ISDA Master Agreement (Multicurrency - Cross Border) or an ISDA Master Agreement (Local Currency - Single Jurisdiction) (each an "ISDA Master Agreement") with a means of using that agreement to achieve a form of cross-product netting. It does so by enabling them, in certain circumstances, to terminate transactions documented under other industry-standard agreements and to incorporate the net close-out amounts calculated in respect of those transactions within the close-out provisions of their ISDA Master Agreement.

   It is intended that parties will be able to use the Bridge with a broad range of industry-standard master agreements. Towards the end of 2000, ISDA received preliminary advice from its counsel on the question of whether the use of the Bridge with various master agreements (including those that provide for the physical delivery of commodities, such as coal, electricity or gas) would affect the conclusions expressed in each netting opinion. The advice received from the majority of ISDA's counsel was that the conclusions would not be affected. However, parties should be aware that, in a few jurisdictions, counsel expressed the preliminary view that using the Bridge with agreements that provide for the physical delivery of commodities would affect the conclusions expressed in their netting opinions. This advice, which is contained in the "SDR Opinions", is available to members of ISDA on the ISDA website, www.isda.org, under "What's New".

2. Operation of Bridge. Parties who wish to use the Bridge would include it in Part 5 of the Schedule to an ISDA Master Agreement (Multicurrency - Cross Border), or Part 4 of the Schedule to an ISDA Master Agreement (Local Currency - Single Jurisdiction) (or amend an existing ISDA Master Agreement to include the provision). Precisely how the Bridge will operate is a matter to be agreed between the parties.

   For example, if it is included in an ISDA Master Agreement, the provisions of the Bridge operate only upon the occurrence of a "Bridging Event". The Bridge presumes that a Bridging Event will only be triggered if a relevant Event of Default under the ISDA Master Agreement occurs. In paragraph 1(c)(i) of the Bridge, the parties must specify which Events of Default under the ISDA Master Agreement they wish to be relevant for this purpose. The Bridge presumes that parties will specify either all Events of Default under the ISDA Master Agreement or only the Bankruptcy Event of Default. The further requirements for the triggering of a Bridging Event are discussed in paragraph 3 below.

The parties must also specify, in paragraph 1(b)(i) of the Bridge, the agreements ("Bridged Agreements") they wish to be covered by the terms of the Bridge.[1]

3. Occurrence of Bridging Event. As mentioned above, the Bridge only operates if a Bridging Event is triggered, and a Bridging Event will only be triggered if an Event of Default (as specified by the parties) under the ISDA Master Agreement occurs.

Upon the occurrence of one of these specified Events of Default, a Bridging Event typically only occurs upon the designation of an Early Termination Date as a result of that Event of Default.

However, a Bridging Event may also be triggered in one of the following ways.

(a) If Automatic Early Termination applies

If Automatic Early Termination has been specified to apply in respect of one or both parties, parties have a choice in the Bridge between providing that a Bridging Event will occur immediately upon the deemed occurrence of an Early Termination Date as a result of the occurrence of a relevant Event of Default, or providing that a Bridging Event will *not* occur in these circumstances. In the latter case, where one of the Bankruptcy events to which Automatic Early Termination applies occurs, the Non-defaulting Party will not be able to rely on the provisions of the Bridge.

(b) If there is not an outstanding transaction under the ISDA Master Agreement

The Bridge also includes provisions addressing the possibility that there may not be an outstanding transaction under the ISDA Master Agreement, although there may be transactions outstanding under one or more Bridged Agreements. If there were not an outstanding transaction under the ISDA Master Agreement there would not be an opportunity for the Non-defaulting Party to designate an Early Termination Date or, where Automatic Early Termination would have applied, for an Early Termination Date to arise. As a result, a Bridging Event could not occur. It may still be important, however, for the Non-defaulting Party to make use of the Bridge to net its exposures arising under two or more Bridged Agreements.

In these circumstances, therefore, the Bridge provides that a Bridging Event will occur, in general terms, either:

[1] The definition of "Bridged Agreements" also includes any agreement that the parties agree will be subject to the provisions of the Bridge. Note that if the parties include the Bridge in an ISDA Master Agreement (Local Currency - Single Jurisdiction), they should be aware that this form of agreement does not contain any Termination Currency conversion provisions. Accordingly, they should ensure that they specify as Bridged Agreements only agreements that generate close-out amounts in the same currency as that involved in transactions entered into under the ISDA Master Agreement (Local Currency - Single Jurisdiction).

(i) immediately upon the Non-defaulting Party designating a day as a day on which, pursuant to the provisions of the Bridge, transactions outstanding under any Bridged Agreements will be closed out; or

(ii) if the parties have included paragraphs (1)(c)(y) and (z) of the Bridge, immediately upon the occurrence of the Event of Default (or, as the case may be, immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition) if "Automatic Early Termination" applies and the Event of Default is specified in certain parts of Section 5(a)(vii).

The Bridge also provides that the day so designated or (if the parties have included paragraphs (1)(c)(y) and (z) of the Bridge) the day on which the Bridging Event is deemed to occur, as appropriate, will be deemed to be an Early Termination Date for purposes of Section 6 of the ISDA Master Agreement.

4. Effect of Bridging Event. If a Bridging Event is triggered, an event of default (however such concept is described) under each Bridged Agreement will be deemed to have occurred with respect to the party that is the Defaulting Party under the ISDA Master Agreement and in respect of all transactions outstanding under each Bridged Agreement.

Notwithstanding the provisions of any relevant Bridged Agreement, all such transactions will then be closed out and valued in accordance with the provisions of each relevant Bridged Agreement,[2] but so that the transactions will be closed out on the Early Termination Date (or the deemed Early Termination Date).

The Bridge deems all amounts due or which otherwise would become due under Bridged Agreements (or transactions under Bridged Agreements) to be amounts which were due under Section 2(a)(i) of the ISDA Master Agreement on the Early Termination Date (rather than under the relevant Bridged Agreements or transactions themselves). As with all other payments under Section 2(a)(i), upon the occurrence or effective designation of an Early Termination Date, no further such payments are required to be made (by virtue of Section 6(c)(ii) of the ISDA Master Agreement). Section 6(c)(ii) further provides that the amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e). By amending the definition of "Unpaid Amounts", the Bridge provides the mechanism for including in the close-out calculations under Section 6(e) of the ISDA Master Agreement any amounts due (or which would have become due but for Section 6(c)(ii)) as a result of any acceleration, termination or cancellation of the parties' obligations under a Bridged Agreement. Just like any other Unpaid Amounts, those amounts will be included in the calculations under Section 6(e).

5. Benefits of Approach. The approach taken by the Bridge keeps the agreements between the parties essentially separate from each other, and simply places the close-out mechanics of the ISDA Master Agreement between the parties "on top" of the specified Bridged

[2] It is expected that amounts provided or due as margin in respect of transactions under a Bridged Agreement will be included in the calculation of the net close-out amount due in respect of those transactions. Whether this is correct will depend on the precise nature of the margin arrangements.

Agreements if a Bridging Event is triggered.

This approach has the advantage of not significantly interfering with the operational procedures or the close-out and valuation provisions of a Bridged Agreement, which are widely known and accepted in the relevant market.

It is also expected that, in most jurisdictions, this approach will minimize the insolvency, regulatory and tax implications of using the Bridge. Nevertheless, parties should consider the implications of using the Bridge in consultation with their advisors.

Including the Bridge in an ISDA Master Agreement effectively turns the ISDA Master Agreement into a "master master" agreement. However, using the Bridge in an existing ISDA Master Agreement may offer parties significant advantages:

(a) it makes use of the ISDA Master Agreement's close-out netting provisions, which are supported by an extensive and well respected library of netting opinions;

(b) it may offer, in many jurisdictions, a more robust way of achieving a form of cross-product netting; and

(c) the Bridge can be easily incorporated into a new ISDA Master Agreement or by way of a single amendment without the need to negotiate a separate agreement.