
User's Guide to the 2002 ISDA Equity Derivatives Definitions

2003 EDITION

ISDA[®]

INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

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INTRODUCTION

In the second half of 2001, a survey of ISDA members identified widespread interest in revising the 1996 ISDA Equity Derivatives Definitions (the “1996 Definitions”) to reflect developments in the range of equity products traded and in market practice more generally. Over the course of the following fourteen months, this interest was converted into the preparation of the 2002 ISDA Equity Derivatives Definitions (the “2002 Definitions”).

This User’s Guide is designed to highlight certain salient features of the 2002 Definitions, particularly changes from the 1996 Definitions. This User’s Guide also identifies and discusses certain issues that may merit additional consideration by market participants. Section A of the User’s Guide provides a brief overview of the 2002 Definitions. Section B examines the architecture of ISDA documentation and how the 2002 Definitions relate to that architecture. Section C is a detailed section-by-section analysis of each Article of the 2002 Definitions. Exhibit A describes in graphic form the various products covered by the 2002 Definitions. Exhibit B offers a flowchart illustrating the mechanics of a Cash-settled European Share Option. Exhibit C offers a flowchart demonstrating the mechanics of a Physically-settled European Share Option. Exhibit D offers guidance notes on Share Basket Valuations, Consequences of Merger Events and Tender Offers, Additional Disruption Events and Averaging Date Disruptions. Exhibit E offers guidance notes on Equity Swaps¹. Exhibit F presents sample language on Market Disruption Events and Multi-Jurisdiction Baskets. Exhibit G provides sample language for special situations arising under Transactions where the Shares are represented by Global Depository Receipts and American Depository Receipts. Exhibit H provides sample language with respect to Disrupted Days on multi-exchange Indices (such as Eurostoxx).

Capitalized terms used in this User’s Guide and not defined have the meanings given such terms in the 2002 Definitions unless otherwise indicated. Unless otherwise indicated, Section references in this User’s Guide are to the 2002 Definitions.

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¹ ISDA wishes to thank JP Morgan London for the provision of Exhibits B through E.

USER'S GUIDE TO THE 2002 ISDA EQUITY DERIVATIVES DEFINITIONS

A. OVERVIEW OF THE 2002 DEFINITIONS

A number of significant changes have been made in the 2002 Definitions. For example, the provisions dealing with adjustments have been expanded, both in terms of the type of trigger event that can lead to an adjustment or termination of a Transaction and the menu of elections available to the parties to deal with such an event. New trigger events include Tender Offers, Delisting and a range of optional Additional Disruption Events. The menu of consequences from which the parties may choose to deal with a Merger Event has increased from three to seven elections. Other technical amendments have been made to the core operative provisions of the 2002 Definitions such as those relating to exercise, settlement and disruptions. In addition, the 2002 Definitions extend the product range to include forwards, barrier instruments, such as knock-in and knock-out securities, and Bermuda options.

The general structure of the 2002 Definitions has remained the same as that of the 1996 Definitions. Provisions relating to specific Transaction types are addressed first. Exercise, valuation and settlement provisions and adjustment methodologies and other optional provisions are also addressed. However, several structural amendments have been made such as de-linking settlement type from Transaction type (*e.g.*, to allow for Physically-settled Swap Transactions) and concentrating the provisions relating to dividends into a single Article. The 2002 Definitions are specifically structured as follows: (i) Article 1 contains certain general definitions; (ii) Article 2 contains general terms relating to Option Transactions; (iii) Article 3 contains terms relating to the exercise of Option Transactions; (iv) Article 4, the first of four new Articles in the 2002 Definitions, contains general terms relating to Forward Transactions; (v) Article 5 contains general terms relating to Equity Swap Transactions; (vi) Article 6 contains provisions relating to valuation; (vii) Article 7, a second new Article, contains general terms relating to settlement; (viii) Article 8 contains provisions relating to cash settlement; (ix) Article 9 contains provisions relating to physical settlement; (x) Article 10, a third new Article, contains provisions relating to dividends; (xi) Article 11 contains provisions relating to adjustments and modifications affecting Indices, Shares and Transactions; (xii) Article 12 contains general provisions relating to Extraordinary Events and the consequences of Merger Events, Tender Offers, Nationalization, Insolvency and Delisting are set forth therein, along with new provisions dealing with Additional Disruption Events and their consequences; and (xiii) Article 13, the fourth new Article, contains miscellaneous provisions, including non-reliance representations and certain agreements and acknowledgments regarding hedging activities.

The 2002 Definitions were prepared primarily for use with Option Transactions, Forward Transactions and Equity Swap Transactions. The 2002 Definitions are not designed to document other types of equity derivative transactions but may be a useful starting point in documenting those transactions and the parties may amend or add to the 2002 Definitions as appropriate given the type of transaction.

The 2002 Definitions are intended to constitute a global market standard. It is recognized, however, that, in documenting a given Option Transaction, Forward Transaction or Equity Swap Transaction, parties may wish to amend the 2002 Definitions to address considerations specific to a particular jurisdiction. The 2002 Definitions also attempt to address jurisdictional variance in several provisions by building in flexibility wherever possible, typically by utilizing the Calculation Agent to make an appropriate determination based on the facts at hand. For example, the process of determining the effective date for a merger is not the same worldwide and the potential role of the

Calculation Agent is evident as a result of such variations of local practice and the consequent need to accommodate various approaches within the 2002 Definitions.

B. ARCHITECTURE OF DOCUMENTATION

The 2002 Definitions are designed to govern Option Transactions, Forward Transactions or Equity Swap Transactions (each, a “Transaction” as defined in Section 1.1 of the 2002 Definitions) as agreed to by the parties in the related Confirmation.

1. Use of 2002 Definitions with other ISDA Definitional Booklets

The 2002 Definitions replicate certain terms from the 1996 Definitions so that the 2002 Definitions are self-contained and include all the necessary terms for documenting a Transaction. Parties, therefore, do not need to incorporate the 1996 Definitions or any of ISDA’s other definitional booklets into a Confirmation in order to document a Transaction (assuming that such Transaction has incorporated the 2002 Definitions). Parties that wish to incorporate additional provisions from the 2000 ISDA Definitions (the “2000 Definitions”) or other ISDA definitions booklets into a Confirmation of a Transaction should carefully review how the terms in such booklets and in the 2002 Definitions interrelate. For example, the 2000 Definitions may need to be incorporated with respect to the Floating Amount for Equity Swap Transactions and the Stock Loan Rate in the Agreed Model for Option Transactions.

2. Confirmations

The 2002 Definitions are intended for use in confirmations of individual transactions (“Confirmations”) governed by agreements such as the 2002 or 1992 ISDA Master Agreements (the “ISDA Master Agreements”) published by the International Swaps and Derivatives Association, Inc. (“ISDA”). Copies of the ISDA Master Agreements are available from the executive offices of ISDA and also from the ISDA web-site (www.isda.org).

The 2002 Definitions are intended to provide a basic framework for documenting privately negotiated equity derivative transactions. As with other product-specific definitions published by ISDA, however, parties using the 2002 Definitions to document privately negotiated equity derivative transactions may adapt or supplement the standard provisions set out in the 2002 Definitions to reflect the economic terms agreed between the parties to the relevant Transaction. Suggested language is included in this User’s Guide for common supplemental provisions.

At the same time the 2002 Definitions were published, ISDA published on its website 18 Confirmation templates relating to the most commonly transacted forms of equity derivative transactions. This series of Confirmation templates effectively provides a checklist of the proximate product coverage of the 2002 Definitions.

The 2002 Definitions can be incorporated by reference into any Confirmation. Existing Confirmations that incorporate the 1996 Definitions (or the predecessor 1994 ISDA Equity Option Definitions) will not, without further action by the parties, be affected by the use of the 2002 Definitions for other Transactions. Users of the 2002 Definitions should satisfy themselves that any particular term or provision suits their intention in a given Transaction or that the parties amend the term or provision accordingly, which parties remain free to do.

C. DISCUSSION OF THE 2002 DEFINITIONS

1. ARTICLE 1 – CERTAIN GENERAL DEFINITIONS

Section 1.1. Transaction. Section 1.1 defines Transaction as an Option Transaction, a Forward Transaction, an Equity Swap Transaction or any other transaction deemed a “Transaction” in a Confirmation. This provision has been amended from the 1996 Definitions to add “Forward Transaction”.

Section 1.2. Option Transaction. Section 1.2 defines an Option Transaction as an over-the-counter equity option transaction relating to a single index (an “Index Option Transaction”), a single share or other security (a “Share Option Transaction”), a basket of indices (an “Index Basket Option Transaction”) or a basket of shares or other securities (a “Share Basket Option Transaction”). There are three common types of Option Transactions: an American Option, a Bermuda Option and a European Option, discussed in Section 2.2 below.

Section 1.3. Forward Transaction. Section 1.3 is a new definition in the 2002 Definitions. Forward Transactions were not covered in the 1996 Definitions and the 2002 Definitions were expanded to specifically address them. A Forward Transaction is defined as an over-the-counter equity forward transaction relating to a single index (an “Index Forward Transaction”), a single share or other security (a “Share Forward Transaction”), a basket of indices (an “Index Basket Forward Transaction”) or a basket of shares or other securities (a “Share Basket Forward Transaction”). There are many types of Forward Transactions, such as variable obligation and prepaid products, which are described in Article 4 below.

Section 1.4. Equity Swap Transaction. Section 1.4 defines an Equity Swap Transaction as an over-the-counter equity swap transaction relating to a single index (an “Index Swap Transaction”), a single share or other security (a “Share Swap Transaction”), a basket of indices (an “Index Basket Swap Transaction”) or a basket of shares or other securities (a “Share Basket Swap Transaction”).

Section 1.5. Index Transaction. Section 1.5 defines an Index Transaction as an Index Option Transaction, an Index Forward Transaction or an Index Swap Transaction. It has been amended from the 1996 Definitions to add “Index Forward Transaction”.

Section 1.6. Share Transaction. Section 1.6 defines a Share Transaction as a Share Option Transaction, a Share Forward Transaction or a Share Swap Transaction. It has been amended from the 1996 Definitions to add “Share Forward Transaction”.

Section 1.7. Index Basket Transaction. Section 1.7 defines an Index Basket Transaction as an Index Basket Option Transaction, an Index Basket Forward Transaction or an Index Basket Swap Transaction. Section 1.7 has been amended from the 1996 Definitions to add “Index Basket Forward Transaction”.

Section 1.8. Share Basket Transaction. Section 1.8 defines a Share Basket Transaction as a Share Basket Option Transaction, a Share Basket Forward Transaction or a Share Basket Swap Transaction. It has been amended from the 1996 Definitions to add “Share Basket Forward Transaction”.

Section 1.9. Basket Option Transaction. Section 1.9 defines a Basket Option Transaction as an Index Basket Option Transaction or a Share Basket Option Transaction.

Section 1.10. Basket Forward Transaction. Section 1.10 is a new definition in the 2002 Definitions, defining a Basket Forward Transaction as an Index Basket Forward Transaction or a Share Basket Forward Transaction.

Section 1.11. Basket Swap Transaction. Section 1.11 is a new definition to the 2002 Definitions, defining a Basket Swap Transaction as an Index Basket Swap Transaction or a Share Basket Swap Transaction.

Section 1.12. Confirmation. Section 1.12 defines a Confirmation as one or more documents and other confirming evidence exchanged between the parties that evidence all the terms of a Transaction.

Section 1.13. Index. Section 1.13 defines an Index as each index specified as such in the related Confirmation.

Section 1.14. Shares. Section 1.14 defines Shares as the shares or other securities specified as such in the related Confirmation.

Section 1.15. Basket. Section 1.15 defines Basket, in the case of an Index Basket Transaction, as a basket composed of each Index specified in the Confirmation, in such proportions as specified in the Confirmation, or in the case of a Share Basket Transaction, a basket composed of Shares of each Issuer specified in the relative proportions or numbers specified in the related Confirmation.

Section 1.16. Issuer. Section 1.16 defines Issuer as the issuer of the relevant Shares.

Section 1.17. Trade Date. Section 1.17 defines Trade Date as the date specified as such in the Confirmation. To the extent that parties have incorporated the 2000 Definitions, they may wish to define an “Effective Date” in relation to the Trade Date by using the Settlement Cycle definition *e.g.* “The Currency Business Day that is one Settlement Cycle following the Trade Date”.

Section 1.18. Buyer. Section 1.18 defines Buyer as the party specified as such in the Confirmation. This provision was formerly located in Section 2.2(a) of the 1996 Definitions.

Section 1.19. Seller. Section 1.19 defines Seller as the party specified as such in the Confirmation. This provision was formerly located in Section 2.2(b) of the 1996 Definitions.

Section 1.20. Number of Shares. Section 1.20 defines Number of Shares as (a) in respect of a Share Option Transaction, the number of Shares obtained by multiplying the Number of Options by the Option Entitlement; (b) in respect of a Share Forward Transaction or a Share Swap Transaction, the number of Shares specified as such in the Confirmation; and (c) in respect of a Share Basket Transaction for the Shares of each Issuer in the Basket, the number of such Shares per Basket specified or provided for in the Confirmation. This provision was formerly located in Section 7.6 of the 1996 Definitions.

Section 1.21. Number of Baskets. Section 1.21 defines Number of Baskets as the number of Baskets specified or determined as provided in the Confirmation. This provision was formerly located in Section 7.7 of the 1996 Definitions.

Section 1.22. Multiplier. Section 1.22 defines Multiplier as the percentage or amount specified in the Confirmation. This provision was formerly located in Section 2.1(c) of the 1996 Definitions.

Section 1.23. Relevant Price. Section 1.23 defines Relevant Price in respect of an Index and a Share, determined as of the Valuation Time on the Valuation Date or Averaging Date. The phrase “as of” was intended to address the fact that some exchanges have delayed trade reporting, for example up to 90 seconds on the NASDAQ in the United States. In relation to an Index, the definition provides that the Relevant Price is the level of such Index as determined by the Calculation Agent, subject to any provisions of the Confirmation. In relation to Shares, the Relevant Price is the price per Share as determined by the Calculation Agent as provided in the Confirmation. If no means are provided, the fallback mechanism for determining the price per Share depends on whether the Exchange operates an auction or a quote-driven approach. For auction exchanges, the price will be that reported in the official real-time price dissemination mechanism for the Exchange and for dealer-quotation exchanges, the price will be the mid-point of the highest bid and lowest offer quoted as of Valuation Time, without regard to quotations that “cross” (where the bid is higher than the offer) or “lock” (where the bid is equal to the offer). In such cases, the particular bid or offer that “locks” or “crosses” the market is disregarded.

Section 1.24. Equity Notional Amount. Section 1.24 defines Equity Notional Amount as the amount specified as such in the Confirmation or, if no amount is specified, the amount specified as “Notional Amount”. This provision was formerly located in Section 7.5 of the 1996 Definitions.

Parties who have selected Averaging to be applicable to their Transaction may wish to adjust the definition of Notional Amount as provided in Section 6.7 below.

Section 1.25. Exchange. Section 1.25 defines Exchange as, in the case of an Index or a Share, each exchange or quotation system specified as such in the Confirmation, any successor or any substitute exchange or quotation system. The definition of Exchange was amended in the 2002 Definitions to add that if the Shares underlying the Index or the Shares themselves have been temporarily relocated to a substitute exchange or quotation system, this will also be considered as an Exchange, provided the Calculation Agent has determined there is comparable liquidity on the relocated Exchange. The “comparable liquidity” test is a subjective test delegated to the Calculation Agent, who is subject to a general standard of acting in good faith and in a commercially reasonable manner, as described in Section 1.40. The same approach is adopted in relation to the term Related Exchange (*see* Section 1.26 below).

Parties should note when referencing NASDAQ as an Exchange, that since the completion of the 2002 Definitions, NASDAQ now publishes an “official” closing price. Parties that decide to have their Transaction based on this price may wish to consider the following language to deal with the application of other sections of the 2002 Definitions:

“Notwithstanding Sections 1.23(b), 3.4(d), 5.9(b) and 7.3(b) of the 2002 Definitions, the Relevant Price, Reference Price, Final Price or Settlement Price, as the case may be, will be the Official NASDAQ Closing Price (NOCP) as of the Valuation Time on the Valuation Date as reported in the official price determination mechanism for the Exchange.”

See the discussion relating to the definition of New Shares (Section 12.1(i) below) and the Delisting Extraordinary Event (Section 12.6 below) for suggested amendments to the definitions of

New Shares and Delisting for parties who wish to differentiate between listing on NASDAQ's National Market System and on NASDAQ's OTC Bulletin Board.

Section 1.26. Related Exchange. Section 1.26 defines Related Exchange as, in the case of an Index or a Share, each exchange or quotation system specified as a Related Exchange in the Confirmation. As with Exchange (*see* Section 1.25 above), Related Exchange includes any temporary substitute to the exchange or quotation system where, in the Calculation Agent's determination, liquidity is comparable to that on the originally stipulated Related Exchange. Where "All Exchanges" is stipulated by the parties in the related Confirmation, those exchanges are included where, in the Calculation Agent's determination, trading has a material effect on the overall market for futures or options contracts relating to the relevant Index or Share. This approach offers flexibility in order to accommodate changes in the marketplace.

Section 1.27. Clearance System. Section 1.27 defines Clearance System as the clearance system specified in the Confirmation or any successor to such clearance system and also provides a fall back if no Clearance System is so specified.

Section 1.28. Index Sponsor. Section 1.28 defines Index Sponsor, a new term in the 2002 Definitions, as the entity that is responsible for setting and reviewing the rules and procedures and the methods of calculation and adjustments related to the relevant Index. The Index Sponsor also announces the level of the relevant Index on a regular basis during or at the end of each trading day.

Section 1.29. Exchange Business Day. In preparing the 2002 Definitions, ISDA consulted with members on how the provisions of the 1996 Definitions operated and potentially needed to be amended to address the events surrounding September 11, 2001 in the United States. The market and exchange disruptions in the United States on September 11, 2001 resulted in uncertainty as to whether the days that the New York exchanges were closed were considered Exchange Business Days on which a Market Disruption Event occurred or were not Exchange Business Days. This distinction was important because the fallback in the Market Disruption Event provisions in the 1996 Definitions required that if a Market Disruption Event occurred on six consecutive Exchange Business Days, the Calculation Agent would determine the value of the Shares based on its good faith estimate of the exchange-traded price that would have prevailed but for the occurrence of the Market Disruption Event. Days that were not Exchange Business Days were not included in the six-day period and therefore operated to delay the requirement that the Calculation Agent make the determination. As an initial response to September 11, 2001, ISDA consulted with members and issued a market practice statement indicating that September 11 and the three days following September 11 (September 12-14, 2001) were not days on which valuations or expirations of options should occur. To clarify this approach in the 2002 Definitions, members determined that a new definition for Scheduled Trading Day should be introduced (*see* Section 1.31 below) and that revisions should be made to Exchange Business Day and Market Disruption Event (*see* Section 6.3(a) below).

Exchange Business Day is now defined in Section 1.29 as a Scheduled Trading Day on which the Exchange and Related Exchange(s) are open for trading for their regular trading sessions, even if those exchanges close prior to the Scheduled Closing Time. Parties should note that if an Exchange opens late, this does not prevent a Scheduled Trading Day from being an Exchange Business Day. A late opening may, however, be a Market Disruption Event if the Exchange opens less than one hour before the applicable Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be (*see* Section 6.3(a)).

Section 1.30. Scheduled Closing Time. Section 1.30 defines Scheduled Closing Time, a new definition in the 2002 Definitions. Scheduled Closing Time is defined as the scheduled weekday closing time for an Exchange or a Related Exchange, without regard to after hours trading or any other trading outside of the regular trading session hours. During preparation of the 2002 Definitions, members noted that on the day before a major holiday (such as Christmas Eve or July 3rd in the United States or the first and last trading day of the year in Japan), the exchanges often close early but, as such closings were scheduled, the shortened trading day was the regular trading session for such exchanges and therefore it was agreed that this should not prevent such a day from being a Valuation Date. In particular, “Scheduled Closing Time” is designed to offer a clear yet flexible standard, reflecting the possibility that Exchanges’ schedules may change from time to time for a variety of reasons that do not necessitate the treatment of such changes as Market Disruption Events. So if, for example, an Exchange always closes at 1 p.m. on December 24th, 1 p.m. will be the Scheduled Closing Time for that Scheduled Trading Day.

Section 1.31. Scheduled Trading Day. Section 1.31 sets forth a new definition that defines Scheduled Trading Day as any day on which each Exchange and each Related Exchange are scheduled to be open for trading for their regular trading sessions, regardless of whether such exchange actually opens on that day. The aim is to permit certain actions to be carried out on a Scheduled Trading Day, even if that day is not an Exchange Business Day. For example, an Option can be exercised and an Exercise Date can occur on any Scheduled Trading Day in the Exercise Period. This is a significant change from the 1996 Definitions in which an Exercise Date could only occur on an Exchange Business Day (*i.e.*, a day when all relevant Exchanges and Related Exchanges were open). This approach eliminates the situation where a Share Basket Option covering multiple jurisdictions cannot be exercised, even in part, on a day when any one of the Exchanges designated in the Confirmation are closed, but were scheduled to be open. Other examples of definitions that are now linked to Scheduled Trading Day include: Expiration Date (*see* Section 3.1(f) below), Valuation Date (*see* Section 6.2 below) and Averaging Date (*see* Section 6.7(a) below), which are all defined by reference to Scheduled Trading Day.

Section 1.32. Currency Business Day. Section 1.32 defines a Currency Business Day as any day on which commercial banks are open for business in the principal financial center for the relevant currency. In addition, the definition has been updated to require that, where the Settlement Currency is the euro, any day on which the Trans-European Automated Real-time Gross settlement Express Transfer (TARGET) system is open shall be a Currency Business Day. This definition is consistent with the 1998 FX and Currency Option Definitions.

Section 1.33. Settlement Currency. Section 1.33 defines Settlement Currency as that currency specified as such in the Confirmation and, unlike the 1996 Definitions, does not provide a fallback if the parties fail to so specify. Section 1.33 was previously set forth in Section 5.3 of the 1996 Definitions.

Section 1.34. Euro. Section 1.34 defines Euro as the lawful currency of the member states of the European Union.

Section 1.35. EC Treaty. Section 1.35 defines EC Treaty as the treaty establishing the European Community, as amended from time to time.

Section 1.36. Clearance System Business Day. Section 1.36 defines Clearance System Business Day as any day on which a Clearance System is (or, but for the occurrence of a Settlement

Disruption Event, would have been) open for the acceptance and execution of settlement instructions. This definition is used in the definition of Settlement Cycle (*see* Section 1.37 below).

Section 1.37. Settlement Cycle. Section 1.37 sets forth a new definition of Settlement Cycle. A Settlement Cycle is the number of Clearance System Business Days within which settlement will customarily occur after a trade in the relevant instrument, according to the rules of the relevant Exchange for an Index, Share or Exchange-traded Contract. Where there are multiple Exchanges in respect of an Index, the longest applicable period will apply.

Note that in respect of an Option Transaction, an Exercise Date can occur on a Scheduled Trading Day notwithstanding that such day may be a Disrupted Day (*see* Sections 3.1 and 6.4). For Cash-settled Option Transactions, the provisions of Article 6 will apply for valuations. For Physically-settled Option Transactions, to the extent that a notice of exercise is given while a Market Disruption Event is continuing, execution of a trade to acquire Shares for delivery pursuant to the Option Transaction may be delayed until the Market Disruption Event has ended. Parties should note that this may have the effect of extending the Settlement Cycle for the Shares, which in turn would delay the Settlement Date until the completion of the extended Settlement Cycle. This is because the Settlement Cycle period will not commence until the Market Disruption Event has ceased to exist. For example, suppose (i) a Market Disruption Event commences at 1 p.m. on Monday and continues for the remainder of the regular trading session, (ii) trading in the Shares resumes at the open of the regular trading session on Tuesday and (iii) the Settlement Cycle is normally three Clearance System Business Days. If an Option Buyer gave a notice of exercise at 2 p.m. on Monday, then the Settlement Date would be Friday (assuming all the days in between were Clearance System Business Days), as the three Clearance System Business Day Settlement Cycle would not commence until the open of the regular trading session on Tuesday (the first time after the notice of exercise was given that a trade in the Shares could be executed since the end of the Market Disruption Event).

Section 1.38. Cash-settled. Section 1.38 defines Cash-settled as having Cash Settlement be applicable to a Transaction.

Section 1.39. Physically-settled. Section 1.39 defines Physically-settled as having Physical Settlement be applicable to a Transaction.

Section 1.40. Calculation Agent. Section 1.40 defines the Calculation Agent as the person or entity specified as such in the Confirmation. The definition has been amended from Section 1.25 in the 1996 Definitions to specify that the Calculation Agent has a duty to act or exercise its judgment in good faith and in a commercially reasonable manner. In addition, both parties agree that the Calculation Agent is not acting as a fiduciary for or as an advisor to such party. The 2002 Definitions remove the presumption that was present in the 1996 Definitions that Calculation Agent determinations are “binding absent manifest error”.

The concept of Calculation Agent is now consistent with other ISDA definitions booklets. It should be noted that in many provisions throughout the 2002 Definitions, the Calculation Agent has broad discretion (*e.g.*, Modified Calculation Agent Adjustment discussion in Article 12 below).

Section 1.41. ISDA Master Agreement. Section 1.41 defines the ISDA Master Agreement as one of the standard form master agreements published by ISDA. By defining the ISDA Master Agreement, parties may refer to various terms in the ISDA Master Agreement such as “Event of Default”, “Affiliate” and “Early Termination Date”.

Section 1.42. Knock-in Price. Section 1.42 to Section 1.51 address knock-in and knock-out Transactions, sometimes referred to as barrier transactions, in which the payments or deliveries associated with such transaction are contingent upon the occurrence or non-occurrence of a Knock-in Event or Knock-out Event. The terms relating to barrier transactions in Section 1.42 to Section 1.51 can be applied to an Option Transaction, a Forward Transaction or an Equity Swap Transaction. Upon the occurrence of a Knock-in Event or Knock-out Event, any other rights and obligations with regard to the Option Transaction, Forward Transaction or Equity Swap Transaction continue to apply. For example, a Buyer of an Option Transaction will remain obliged to pay any unpaid premium owing on the relevant Option Transaction after the occurrence of a Knock-out Event unless such payment is specified as being subject to such event.

Specifically, Section 1.42 defines Knock-in Price as the level, price or amount specified in the Confirmation. Parties should specify the payment and delivery obligations subject to the Knock-in Event, in particular whether the requirement to pay the Premium is conditional on the occurrence of the Knock-in Event, as the Knock-in Event may occur on any Scheduled Trading Day starting on the Trade Date and the default provision in the 2002 Definitions provides that the Premium Payment Date occurs one Settlement Cycle after the Trade Date.

Section 1.43. Knock-out Price. Section 1.43 defines Knock-out Price as the level, price or amount specified in the Confirmation. Parties should specify the payment and delivery obligations subject to the Knock-out Event, in particular whether the requirement to pay the Premium is conditional on the occurrence of the Knock-out Event as the Knock-out Event may occur on any Scheduled Trading Day starting on the Trade Date and the default provision in the 2002 Definitions provides that the Premium Payment Date occurs one Settlement Cycle after the Trade Date.

Section 1.44. Knock-in Event. Section 1.44 defines a Knock-in Event and discusses when a Knock-in Event is applicable. If Knock-in Event is specified in a Confirmation, a right or obligation that is subject to a Knock-in Event will be conditional upon the occurrence of the Knock-in Event. The Knock-in Event itself is the event or occurrence specified as such in the Confirmation. The Section also provides for circumstances where the Confirmation does not specify such an event or occurrence but specifies a Knock-in Reference Security and/or a Knock-in Price. In that case, a Knock-in Event will be deemed to occur when the level, price or amount of the Knock-in Reference Security has reached the Knock-in Price. Parties should note that in order for the default provision to operate correctly, a Knock-in Price needs to be specified in the related Confirmation. Furthermore, the Relevant Price does not need to fall below/rise above the Knock-in Price for a Knock-in Event to occur. It is sufficient that the Relevant Price equals the Knock-in Price.

Section 1.45. Knock-out Event. Section 1.45 defines Knock-out Event and discusses when a Knock-out Event is applicable. If Knock-out Event is specified in a Confirmation, a right or obligation that is subject to a Knock-out Event will be conditional upon the non-occurrence of the Knock-out Event. The Knock-out Event itself means the event or occurrence specified in the Confirmation. The Section also provides for circumstances where the Confirmation does not specify such an event or occurrence but specifies a Knock-out Reference Security and/or a Knock-out Price. In that case, a Knock-out Event will be deemed to occur when the level, price or amount of the Knock-out Reference Security has reached the Knock-out Price. Parties should note that in order for the default provision to operate correctly, a Knock-out Price needs to be specified in the related Confirmation. Furthermore, the Relevant Price does not need to fall below/rise above the Knock-out Price for a Knock-out Event to occur. It is sufficient that the Relevant Price equals the Knock-out Price.

Section 1.46. Knock-in Reference Security. Section 1.46 defines Knock-in Reference Security as the index, share, other security or basket specified as such in the Confirmation. If a Knock-in Reference Security is not specified in the Confirmation, it will be deemed to be the same Index, Share or Basket, as the case may be, specified in the Confirmation.

Section 1.47. Knock-out Reference Security. Section 1.47 defines Knock-out Reference Security as the index, share, other security or basket specified as such in the Confirmation. If a Knock-out Reference Security is not specified in the Confirmation, it will be deemed to be the same Index, Share or Basket, as the case may be, specified in the Confirmation.

Section 1.48. Knock-in Determination Day. Section 1.48 defines Knock-in Determination Day as each Scheduled Trading Day specified in the Confirmation, unless such day is a Disrupted Day due to the occurrence of an event prior to the Knock-in Valuation Time (*see* Section 6.3 below). In that case, the Knock-in Determination Day shall be the next Scheduled Trading Day that is not a Disrupted Day. If, however, each of the next eight Scheduled Trading Days are Disrupted Days, the eighth such Disrupted Day will be deemed to be the Knock-in Determination Day and the Calculation Agent shall determine the level, price or amount in the same manner that it does pursuant to the provisions of Section 6.6(a)(ii), (b) or (c) on a deemed Valuation Date that is also a Disrupted Day. The Section also stipulates that where no Knock-in Determination Day is specified in the Confirmation, each Scheduled Trading Day from and including the Trade Date to and including the final Valuation Date, the Expiration Date or, in the case of a Physically-settled Transaction, the date one Settlement Cycle prior to the relevant final Settlement Date (adjusted according to Sections 3.1(f) and 6.6), will be deemed to be Knock-in Determination Days.

Section 1.49. Knock-out Determination Day. Section 1.49 defines Knock-out Determination Day as each Scheduled Trading Day specified in the Confirmation, unless such day is a Disrupted Day due to the occurrence of an event prior to the Knock-out Valuation Time (*see* Section 6.3 below). In that case, the Knock-out Determination Day shall be the next Scheduled Trading Day that is not a Disrupted Day. If, however, each of the next eight Scheduled Trading Days are Disrupted Days, the eighth such Disrupted Day will be deemed to be the Knock-out Determination Day and the Calculation Agent shall determine the level, price or amount in the same manner that it does pursuant to the provisions of Section 6.6(a)(ii), (b) or (c) on a deemed Valuation Date that is also a Disrupted Day. The Section also stipulates that where no Knock-out Determination Day is specified in the Confirmation, each Scheduled Trading Day from and including the Trade Date to and including the final Valuation Date, the Expiration Date or, in the case of a Physically-settled Transaction, the date one Settlement Cycle prior to the relevant final Settlement Date (adjusted according to Sections 3.1(f) and 6.6), will be deemed to be Knock-out Determination Days.

Section 1.50. Knock-in Valuation Time. Section 1.50 defines Knock-in Valuation Time as the time on any Knock-in Determination Day specified in the Confirmation. The Section provides that where a Confirmation does not specify a Knock-in Valuation Time, it will be deemed to be the Valuation Time specified in the Confirmation, or if no Valuation Time is specified, the Scheduled Closing Time on the relevant exchange for the Knock-in Reference Security. If the relevant exchange closes prior to its Scheduled Closing Time and this time is before the specified Knock-in Valuation Time, the Knock-in Valuation Time will be deemed to be the actual closing time of the exchange.

Parties may wish to consider amending the definition of Knock-in Valuation Time to accommodate Knock-in Events that may occur at any time during the regular trading session on the relevant Exchange by defining Knock-in Valuation Time in the Confirmation as “any time during the regular trading session (without regard to any after hours or any other trading outside of the regular trading session) on the Exchange”.

See the discussion in Section 6.3 below relating to the application of the Market Disruption Event provisions to these “anytime” barrier transactions and whether a Knock-in Event should occur on an Exchange Business Day where a Market Disruption Event occurs. Section 6.3 below contains a suggested amendment to the definition of Market Disruption Event for parties wishing to provide that a Knock-in Event should not occur if a Market Disruption Event has occurred at any point during the regular trading session on the relevant day.

Section 1.51. Knock-out Valuation Time. Section 1.51 defines Knock-out Valuation Time as the time on any Knock-out Determination Day specified in the Confirmation. The Section provides that where a Confirmation does not specify a Knock-out Valuation Time, it will be deemed to be the Valuation Time specified in the Confirmation, or if no Valuation Time is specified, the Scheduled Closing Time on the relevant exchange for the Knock-out Reference Security. If the relevant exchange closes prior to its Scheduled Closing Time and this time is before the specified Knock-out Valuation Time, the Knock-out Valuation Time will be deemed to be the actual closing time of the exchange.

Parties may wish to consider amending the definition of Knock-out Valuation Time to accommodate Knock-out Events that may occur at any time during the regular trading session on the relevant Exchange, by adding similar language (changing references from “Knock-in” to “Knock-out”) to that described in Section 1.50 above and Section 6.3 below.

2. ARTICLE 2 – GENERAL TERMS RELATING TO OPTION TRANSACTIONS

Section 2.1. Certain Definitions and Provisions Relating to Option Transactions. Section 2.1 sets forth general definitions used in relation to Option Transactions. The style of the Option Transaction is important for purposes of the 2002 Definitions and certain terms relate to specific Option Transaction styles. For example, Commencement Date in Section 2.1(a) is relevant only for an American Option Transaction (*see* Section 2.2 below) and is defined as the date specified in the Confirmation or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day. If the parties have not specified a Commencement Date in their Confirmation, the Commencement Date is the Trade Date.

The parties must also specify in the related Confirmation the Number of Options (Section 2.1(b)) and the Option Entitlement (Section 2.1(c)). The Option Entitlement is the number of Shares per Option or the number of Baskets per Option that the parties specify in their Confirmation. If the parties do not specify an Option Entitlement, it is deemed to be one Share per Option or one Basket per Option. Section 2.1(d) defines Option as each unit of the Option Transaction, for purposes of exercising the Option, valuing the Option or settling the Option. Section 2.1(e) defines Strike Price, which can be a specific level for a relevant Index, a price per Share or the amount or price per Basket, depending on what type of Option is at issue. The Strike Price is not defined on a per Option basis, but is related to the Optional Entitlement and defined in relation to the level of the Index, price per Share or amount per Basket. To determine the price per Option, the Strike Price should be multiplied by the Option Entitlement. For example, if the Option Entitlement is 5 and the Strike Price is \$2 per share, then the price per Option is \$10 per Option.

Section 2.2. Option Style. Section 2.2 sets forth the three primary types of Option styles addressed in the 2002 Definitions. First, Section 2.2(a) defines American Option. An American Option is an Option Transaction in which the Option can be exercised on any Scheduled Trading Day during the Exercise Period. Second, Section 2.2(b) addresses Bermuda Options, a new Option style introduced in the 2002 Definitions. A Bermuda Option is an Option Transaction in which the Option

can only be exercised on defined Potential Exercise Dates during the Exercise Period and on the Expiration Date. Third, Section 2.2(c) defines European Option. A European Option is an Option Transaction in which the Option can only be exercised on the Expiration Date.

Section 2.3. Option Type. Section 2.3 defines Calls and Puts. Section 2.3 was formerly Section 2.4 in the 1996 Definitions. The definitions of Call and Put were not substantively amended in the 2002 Definitions. A Call, defined in Section 2.3(a), allows a Buyer, once an Option has been exercised, to receive cash if the Settlement Price exceeds the Strike Price or it gives the Buyer the ability to purchase Shares or Baskets of Shares at the Settlement Price from the Seller if Physical Settlement is applicable. A Put, defined in Section 2.3(b), allows a Buyer to receive cash if the Strike Price exceeds the Settlement Price or it gives the Buyer the ability to sell Shares or Baskets of Shares to the Seller at the Settlement Price.

Section 2.4. Terms Relating to Premium. Section 2.4 (formerly Section 2.5 in the 1996 Definitions) states that a Buyer of an Option Transaction must pay the Seller a Premium on the Premium Payment Date (*see* Section 2.4(a)). Section 2.4(b) defines Premium as the amount that the Buyer agrees to pay the Seller up-front for the Option. The Premium is specified in the related Confirmation. Section 2.4(c) (formerly Section 2.5(b) of the 1996 Definitions) was amended in the 2002 Definitions to provide that if the Premium Payment Date is not specified in the Confirmation, the Premium Payment Date will fall on the date that is one Settlement Cycle following the Trade Date or, if such date is not a Currency Business Day, the next following Currency Business Day.

3. ARTICLE 3 – EXERCISE OF OPTIONS

Section 3.1. General Terms Relating to Exercise. Section 3.1 sets forth the general terms relating to the exercise of Options. Section 3.1(a) defines Exercise Period in terms of the relevant Option style. For example, if the parties have a Bermuda Option, Section 3.1(a)(ii) states that the Exercise Period is between 9:00 a.m. and the Latest Exercise Time on the Expiration Date and between 9:00 a.m. and the Latest Exercise Time on each Potential Exercise Date. All times set forth in Section 3.1(a) relating to the Exercise Period are intended to be the local time in the location of the Seller for receipt of notices or the local time in the location where an agent is designated by the Seller for receipt of notices. If, however, a location of the Seller or its agent is not set forth in the related Confirmation, the fallback is the local time in the jurisdiction of the Exchange.

Section 3.1(b) defines the Exercise Date as the Scheduled Trading Day during the Exercise Period when the Option is (or is deemed to be) exercised. This is a change from the 1996 Definitions, which provided that an Exercise Date could only occur on an Exchange Business Day, and, along with the last sentence of Section 3.1(c) and 3.1(f), clarifies that a notice of exercise will be binding notwithstanding any concurrent or later disruptions in the markets.

Section 3.1(c) defines Potential Exercise Date. Potential Exercise Date relates to Bermuda Options and is each date specified as such in the related Confirmation. If the date specified by the parties is not a Scheduled Trading Day, the Potential Exercise Date is the next Scheduled Trading Day. However, if the Scheduled Trading Day is a Disrupted Day, then the Potential Exercise Date may be deferred until the next Scheduled Trading Day that is not a Disrupted Day, up to a maximum of eight Scheduled Trading Days beyond the originally intended Potential Exercise Date. Such ninth Scheduled Trading Day will be the last day on which the Buyer may exercise the Option until the next Potential Exercise Date. If the Bermuda Option is exercised before the occurrence of an event that gives rise to a Disrupted Day, then such day will still be considered a Potential Exercise Date (although if the Option is Cash-settled, valuation would be deferred in accordance with Section 6.6).

Section 3.1(d) specifies the Latest Exercise Time. In respect of an Option Transaction, the Latest Exercise Time is the time specified in the related Confirmation, provided that on the Expiration Date the Latest Exercise Time is the Expiration Time. If the Latest Exercise Time is not specified in the related Confirmation, it shall be the Expiration Time.

Section 3.1(e) defines Expiration Time. In respect of an Option Transaction, the Expiration Time is the time specified in the related Confirmation. If the Expiration Time is not specified in the related Confirmation, it shall be the Valuation Time.

Section 3.1(f) defines Expiration Date. In respect of an Option Transaction, the Expiration Date is the date specified in the related Confirmation. Similar to the approach of Potential Exercise Date in Section 3.1(c), if the date specified by the parties is not a Scheduled Trading Day, the Expiration Date is the next Scheduled Trading Day. However, if the Scheduled Trading Day is a Disrupted Day, then the Expiration Date will, unless the Option is exercised, be deferred up to a maximum of eight Scheduled Trading Days beyond the originally intended Expiration Date. If the Expiration Date is a Disrupted Day and an Option is exercised, whether before or after the event that gives rise to a Disrupted Day, then such day will still be considered the Exercise Date.

Section 3.2. Procedure for Exercise. Section 3.2 describes the procedures for exercising an Option. The Buyer of an Option must provide an irrevocable notice to the Seller or to Seller's Agent during the Exercise Period of its exercise of an Option. The Buyer must specify in the notice the number of Options being exercised on the relevant Exercise Date. The notice may be oral (telephonic) if practicable, but otherwise the notice should be written. If the notice is oral, the Buyer must deliver to the Seller or to the Seller's Agent a written confirmation of the oral notice within one Scheduled Trading Day of the oral notice. However, the Buyer's failure to deliver the written confirmation of the oral notice will not affect the validity of the oral notice. The provisions of Section 3.2 do not apply if the Option is deemed exercised pursuant to the provisions for Automatic Exercise.

Section 3.3. Multiple Exercise. Section 3.3 addresses Multiple Exercise. "Multiple Exercise" may be specified as applicable to an American Option or a Bermuda Option in the related Confirmation. If "Multiple Exercise" is applicable, then the Buyer may exercise all or less than all of the unexercised Options on one or more Scheduled Trading Days during the Exercise Period. However, the Buyer may not exercise less than the Minimum Number of Options or more than the Maximum Number of Options (both numbers may be specified in the related Confirmation). If the Buyer attempts to exercise more than the Maximum Number of Options, then the Buyer is deemed to exercise the Maximum Number of Options and the excess number of Options over the Maximum Number of Options is considered to remain unexercised. Note that the attempt to exercise with respect to such excess amount is not automatically carried over to the next Scheduled Trading Day or Potential Exercise Date, as applicable, except as provided under Section 3.4 below. If less than the Minimum Number of Options is exercised, then the exercise is considered ineffective. In addition, if an "Integral Multiple" of Options is specified in the related Confirmation, then the number of Options exercised by the Buyer must be equal to, or be an integral multiple of, the number so specified. However, a Buyer may exercise any number of Options equal to or less than the Maximum Number of Options if it exercises all of the remaining Options and it can exercise any number of Options without restriction on the Expiration Date.

Section 3.4. Automatic Exercise. The parties may specify in the related Confirmation that "Automatic Exercise" applies to the Option Transaction. If Automatic Exercise applies and "Cash Settlement" is applicable, then each Option not previously exercised is deemed automatically exercised at the Expiration Time on the Expiration Date, unless the Buyer has notified (in writing or telephonically) the Seller or, if applicable, the Seller's Agent, that it does not wish Automatic

Exercise to occur. If Automatic Exercise applies and “Physical Settlement” is applicable, then each Option not previously exercised is deemed automatically exercised at the Expiration Time on the Expiration Date if at that time the Option is In-the-Money. As with Cash Settlement, the Buyer has the ability to notify the Seller or, if applicable, the Seller’s Agent, that it does not wish Automatic Exercise to occur.

The amount by which a Physically-settled Option must be “In-the-Money” in order for Automatic Exercise to apply has been revised in the 2002 Definitions. Under the 1996 Definitions, Section 3.4(c) stated that for a Call, the Reference Price had to be equal to or greater than 101 percent of the Strike Price. In the case of a Put, Section 3.4(c) of the 1996 Definitions required that the Reference Price had to be less than or equal to 99 percent of the Strike Price. In the 2002 Definitions, Section 3.4(c) states that if a Physically-settled option on the relevant Share is listed on any Relevant Exchange, then the standard set forth for automatic exercise of such Physically-settled listed options by the Related Exchange applies for the purpose of determining whether Automatic Exercise applies to the Option Transaction. If options on a relevant Share are not listed on a Related Exchange, then in respect of a Call, In-the-Money means that the Reference Price is greater than the Strike Price, and in the case of a Put, In-the-Money means that the Reference Price is less than the Strike Price. Parties should note that the listed option market rules may have different automatic exercise thresholds for different types of customers and may wish to consider amending this provision, depending on the underlying Share or Index.

If parties decide to amend the definition of “In-the-Money” in light of these or other considerations, they may wish to consider the following language to remove or modify the threshold:

“In-the-Money” for purposes of Section 3.4(c) of the 2002 Definitions shall mean (i) in respect of a Call, that the Reference Price is greater than the Strike Price; and (ii) in respect of a Put, that the Reference Price is less than the Strike Price.

OR

“In-the-Money” for purposes of Section 3.4(c) of the 2002 Definitions shall mean, in respect of a Call, that the Reference Price is equal to or greater than the lesser of (a) 101% of the Strike Price or (b) [insert amount] above the Strike Price; and in respect of a Put, that the Reference Price is equal to or less than the greater of (a) 99% of the Strike Price or (b) [insert amount] below the Strike Price.

4. ARTICLE 4 – GENERAL TERMS RELATING TO FORWARD TRANSACTIONS

Section 4.1. Certain Definitions Relating to Forward Transactions. Section 4.1 sets forth certain definitions relating to Forward Transactions. As noted in Section 1.3 above, Forward Transactions are a new product covered by the 2002 Definitions. Section 4.1(a) defines Forward Price in terms of the relevant Index level, Share price or amount per Basket depending on the type of Forward Transaction at issue. Section 4.1(b) defines Forward Floor Price as the level of the Index, price per Share or amount per Basket as specified or determined in the related Confirmation. Forward Cap Price is defined in Section 4.1(c) in a similar approach. These latter definitions are relevant in the context of certain variable obligation products, where the Number of Shares or Number of Baskets to be used in settling the Forward Transaction will be dependent upon the current level, price or amount of such Index, Share or Basket on the Valuation Date.

In a Forward Transaction where Variable Obligation is applicable but Prepayment is not, if Physical Settlement applies, the parties agree that the Seller will deliver a variable number of Shares

and the Buyer will make a payment to the Seller, or if Cash Settlement is applicable, then one party will make a payment to the other party. The payment to be made will be calculated in accordance with Section 8.5 or Section 9.2, as applicable. The Number of Shares to be Delivered or the Number of Baskets to be Delivered or amount of cash to be paid (along with the party required to make such payment) is based on the price per Share or amount per Basket, as the case may be, at maturity. In a Forward Transaction where Variable Obligation and Prepayment are applicable, then the Buyer will make a payment to the Seller following the Trade Date and the Seller will deliver a variable number of Shares or Baskets of Shares or equivalent cash amount at maturity.

Section 4.2. Terms Relating to Prepayment. The parties may specify a Prepayment Amount in respect of a Forward Transaction. Section 4.2(a) states that if a Prepayment Amount is specified, the Buyer must pay the Seller this amount on the Prepayment Date. Prepayment Amount is defined in Section 4.2(b) as the amount specified or determined in the related Confirmation. Prepayment Date is defined in Section 4.2(c) as the date specified in the related Confirmation. If such date is not a Currency Business Day (*see* Section 1.32 above), then the Prepayment Date is the next following Currency Business Day. If the Prepayment Date is not specified in the related Confirmation, it will fall on the date that is one Settlement Cycle following the Trade Date. If that date is not an Exchange Business Day that is a Currency Business Day, then it is the next following Exchange Business Day that is a Currency Business Day.

5. ARTICLE 5 – GENERAL TERMS RELATING TO EQUITY SWAP TRANSACTIONS

Section 5.1. Equity Amount Payer. Article 5 sets forth general terms relating to the third type of Transaction addressed in the 2002 Definitions, Equity Swap Transactions. It should be noted that to the extent parties wish to incorporate a floating rate leg into their Equity Swap Transaction Confirmations, the 2002 Definitions do not accomplish this and as with such Transactions documented pursuant to the 1996 Definitions, the 2000 Definitions should also be incorporated or customized provisions added to the Confirmation. Under the 1996 Definitions, Equity Swap Transactions were addressed in Article 7. Section 5.1 of the 2002 Definitions defines Equity Amount Payer as the party or parties specified in the related Confirmation with respect to an Equity Swap Transaction.

Section 5.2. Equity Amount Receiver. Equity Amount Receiver is a new term in the 2002 Definitions. Section 5.2 defines Equity Amount Receiver as the party or parties specified in the related Confirmation in respect to an Equity Swap Transaction. If such party is not specified, then the Equity Amount Receiver is the party not specified as the Equity Amount Payer.

Section 5.3. Initial Exchange Amount. Initial Exchange Amount is a new elective term in the 2002 Definitions. Section 5.3 defines Initial Exchange Amount as the amount specified in the related Confirmation that is payable on the Initial Exchange Date. Initial Exchange Amount and Final Exchange Amount (*see* Section 5.5 below) were introduced to permit certain market access structures to be covered.

Section 5.4. Initial Exchange Date. Initial Exchange Date is a new elective term in the 2002 Definitions. Section 5.4 defines Initial Exchange Date as the date specified or determined in the related Confirmation. If such date is not an Exchange Business Day that is a Currency Business Day, then the Initial Exchange Date is the next following Exchange Business Day that is a Currency Business Day.

Section 5.5. Final Exchange Amount. Final Exchange Amount is a new elective term in the 2002 Definitions. Section 5.5 defines Final Exchange Amount as the amount specified in the related Confirmation. It is intended to be the final amount exchanged between the parties in settlement of their Equity Swap Transaction. As with Initial Exchange Amount, Final Exchange Amount relates to market access products.

Section 5.6. Final Exchange Date. Final Exchange Date is a new elective term in the 2002 Definitions. Section 5.6 defines Final Exchange Date as the date specified or determined in the related Confirmation. If such date is not an Exchange Business Day that is a Currency Business Day, then the Final Exchange Date is the next following Exchange Business Day that is a Currency Business Day.

Section 5.7. Rate of Return. Rate of Return was defined in Section 7.8 of the 1996 Definitions. The formula for calculating the Rate of Return has not been amended in Section 5.7 of the 2002 Definitions. The formula set forth in Section 5.7 is that the Rate of Return equals (i) the Final Price minus the Initial Price, divided by the Initial Price, multiplied by (ii) the Multiplier, if any.

Section 5.8. Initial Price. Initial Price was defined in Section 7.9 of the 1996 Definitions. The provision has not been amended in Section 5.8 of the 2002 Definitions. Initial Price is defined as the price specified or determined in the related Confirmation for the first Valuation Date under an Equity Swap Transaction. For subsequent Valuation Dates, the Initial Price is the Final Price for the Valuation Date immediately preceding such Valuation Date.

Section 5.9. Final Price. Final Price was defined in Section 7.10 of the 1996 Definitions. Aspects of the definition in clause (b) have been amended as set forth below, but clauses (a), (c) and (d) remain generally the same as those set forth in Section 7.10 of the 1996 Definitions.

Section 5.9(a) states that in respect of an Index Swap Transaction, the Final Price is the Index level determined by the Calculation Agent as provided in the Confirmation as of the Valuation Time on the Valuation Date. If no means for determining the Final Price are provided, the Final Price is the Index level as of the Valuation Time on the Valuation Date.

Section 5.9(b) states that in respect of a Share Swap Transaction, the Final Price is the price per Share determined by the Calculation Agent as provided in the Confirmation as of the Valuation Time on the Valuation Date. If no means of determining the Final Price are provided, an amended definition (as compared to the approach in the 1996 Definitions) provides that for Shares for which the Exchange is an auction or “open outcry” exchange that has a price as of the Valuation Time, the Final Price is the price per Share as of the Valuation Time on the Valuation Date as reported in the official real-time price dissemination mechanism for the Exchange. For Shares in which the Exchange is a dealer exchange or dealer quotation system, the Final Price is the mid-point of the highest bid and lowest ask prices quoted as of the Valuation Time on the Valuation Date, with no regard to quotations that “lock” or “cross” (*see* Section 1.23 above) the dealer exchange or dealer quotation system.

Section 5.9(c) states that in respect of an Index Basket Transaction, the Final Price is the amount for the Basket as determined by the Calculation Agent as provided in the Confirmation as of the Valuation Time on the Valuation Date. If no means of determining the Final Price are provided, the Final Price is the amount for the Basket equal to the sum of the Relevant Prices for the Indices comprised in the Basket. The Relevant Prices are weighted or adjusted in relation to each Index as provided for in the related Confirmation.

Section 5.9(d) states that in respect of a Share Basket Swap Transaction, the Final Price is the amount for the Basket determined by the Calculation Agent as provided in the Confirmation as of the Valuation Time on the Valuation Date. If no means of determining the Final Price are provided, the Final Price is the sum of the values for the Shares of each Issuer, considering the Relevant Price for the Share and the relevant Number of Shares in the Basket.

During the drafting of the 2002 Definitions, some members commented that the definition of Final Price may need to be amended to accommodate Transactions priced based on a party's hedging transactions. The definition of Final Price could be amended so that it is "The weighted average price per Share at which the Hedging Party unwinds its Hedge Position(s) on the Valuation Date". If this amendment is made, a corresponding amendment to Valuation Time in Section 6.1 should also be considered so that it is "The time at which the Hedging Party completes the unwind of its Hedge Position(s)".

In addition in such cases, parties may wish to consider amending the definition of Market Disruption Event by deleting the phrase " , at any time during the one hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be," after the word "material" in the third line of Section 6.3(a) and replacing it with the phrase:

"at any time during the regular trading session on the Exchange or the Related Exchange, without regard to after hours or any other trading outside of the regular trading session hours on the Valuation Date"

and by adding the following to the end of the definition of Disrupted Day in Section 6.4 as follows:

"A Scheduled Trading Day on which a Market Disruption Event occurs or on which the Exchange or any Related Exchange fails to open during its regular trading session will not be a Disrupted Day if the Calculation Agent determines that such Market Disruption Event or such failure to open will not have a material effect on the Hedging Party's ability to unwind its Hedge Position or will only be a Disrupted Day for the valuation of such Number of Shares that the Hedging Party was unable to unwind in such related Hedge Position."

Further, if Averaging is applicable, then parties may wish to consider amending the definition of Final Price to be "The weighted average price per Share at which the Hedging Party unwinds its Hedge Position over the Averaging Dates". This addition of the phrase "over the Averaging Dates" would ensure that hedge may be unwound over the Averaging Dates, in whatever proportion desired by the Hedging Party. In addition, for Equity Swap Transactions involving Averaging (as discussed at Section 6.7 below) parties may wish to consider amending the definition of Notional Amount in Section 1.24 to take into account the Hedging Party's price to unwind its Hedge Positions. Parties often define Notional Amount as the Equity Notional Amount. In such cases the following language may be inserted at the end of the definition, adjusted if the parties think appropriate to reflect interest breakage costs:

" ; provided that, solely for purposes of computing the Notional Amount, for each day commencing on the Exchange Business Day that is one Settlement Cycle following the first Averaging Date, the Equity Notional Amount for each such day will be deemed the product of (x) the percentage of the Hedging Party's Hedge Position remaining at the end of the Exchange Business Day that is one Settlement Cycle prior to such day and (y) the Equity Notional Amount as of the start of the related Calculation Period, and the Notional Amount for the related Calculation Period will

equal the weighted average of the Equity Notional Amounts for such period. To the extent a Disrupted Day occurs on an Averaging Date, then the Calculation Agent will adjust the Notional Amount computation accordingly.”

PARTIES SHOULD CONSULT WITH LEGAL AND TAX ADVISERS PRIOR TO MAKING THIS CHANGE WITH RESPECT TO LINKING THE HEDGE POSITION TO THE TRANSACTION.

Section 5.10. Equity Notional Reset. Equity Notional Reset was defined in Section 7.11 of the 1996 Definitions, but has been amended in Section 5.10 of the 2002 Definitions to reflect the change in terminology from “Equity Payment Date” to “Cash Settlement Payment Date”. If “Equity Notional Reset” is specified in the related Confirmation, then for the first Cash Settlement Payment Date, the Equity Notional Amount is the amount specified in the Confirmation. For subsequent Cash Settlement Payment Dates, the Equity Notional Amount is the sum of the Equity Notional Amount in respect of the prior Cash Settlement Payment Date and the Equity Amount in respect of the prior Cash Settlement Payment Date. Lastly, if a “Notional Amount” has been specified in the Confirmation, such amount will be adjusted as set forth in Sections 5.10(a) and (b) as though it were an Equity Notional Amount.

As noted in the Confirmation templates available at ISDA’s website, www.isda.org and in the 1996 Definitions, if parties wish to extend the Floating Amount Payer Calculation Period in the situation where a Payment Date does not correspond with a Cash Settlement Payment Date, they should consider including the following additional language to the end of the definition of Payment Date:

“provided that, if on such date the corresponding Cash Settlement Payment Date has not yet occurred, such Payment Date shall be postponed to the date on which the Cash Settlement Payment Date occurs and the Floating Amount Payer shall pay the Floating Amount due in relation to the relevant Calculation Period on that postponed Payment Date.”

As an alternative to extending the Floating Amount Payer Calculation Period in this situation, the parties may wish to defer payment of the Floating Amount to the Cash Settlement Payment Date, and accrue interest during that period. If the parties wish to take that approach, they may wish to consider adding the following language:

“, provided that, if on such date (the “Original Payment Date”) the corresponding Cash Settlement Payment Date has not yet occurred, (i) the Calculation Period will be deemed to end on (but exclude) the Original Payment Date, (ii) interest will accrue on the Floating Amount from (and including) the Original Payment Date to (but excluding) the Cash Settlement Payment Date at [] calculated on the basis of daily compounding and the actual number of days elapsed and (iii) the Floating Amount Payer shall pay the relevant Floating Amount, together with any accrued interest, on the Cash Settlement Payment Date”.

6. ARTICLE 6 - VALUATION

Section 6.1. Valuation Time. The provisions relating to valuation were addressed in Article 4 of the 1996 Definitions and are now set forth in Article 6 of the 2002 Definitions. The 2002 Definitions significantly revise the approach to addressing disruptions, including Market Disruption Events, Trading Disruptions, Exchange Disruptions and Early Closure, among other provisions. As discussed in Section 1.29 above, when determining what constitutes a day on which exercise,

valuation or settlement can take place in respect of a Transaction, the parties need to be clear in understanding what constitutes a disruption for that particular day.

Section 6.1 offers a definition of Valuation Time. Valuation Time, along with Valuation Date (*see* Section 6.2 below) governs when a price in respect of an Option Transaction, Forward Transaction or an Equity Swap Transaction can be determined. Valuation Time has been amended in the 2002 Definitions. Under Section 4.1 of the 1996 Definitions, Valuation Time was the time specified in the related Confirmation. If a time was not specified in such Confirmation, the Valuation Time was the close of trading on the relevant Exchange in relation to the Share or Index to be valued. Under Section 6.1 of the 2002 Definitions, Valuation Time is the time on the relevant Valuation Date or Averaging Date as specified in the related Confirmation. However, if no time is specified, the Valuation Time is the Scheduled Closing Time (*see* Section 1.30 above) on the relevant Exchange in relation to the Share or Index to be valued. If the relevant Exchange closes prior to its Scheduled Closing Time and the Valuation Time would otherwise occur after the actual closing time, then the Valuation Time is the actual closing time.

Section 6.2. Valuation Date. The definition of Valuation Date has been amended in the 2002 Definitions. Valuation Date is typically not relevant for the application of the 2002 Definitions to Physically-settled Transactions other than Forward Transactions to which Variable Obligation is applicable. Under Section 6.2 of the 2002 Definitions, the Valuation Date is each Exercise Date for an Option Transaction. This approach is identical to that in Section 4.2 of the 1996 Definitions. Section 6.2 also addresses Forward Transactions, which were not covered under the 1996 Definitions. For Forward Transactions and for Equity Swap Transactions, the Valuation Date is each date specified or determined in the related Confirmation. If such date is not a Scheduled Trading Day, the Valuation Date is the next following Scheduled Trading Day, subject to the provisions of Section 6.6, discussed below. This approach is different from that taken in Section 4.2 of the 1996 Definitions in that the date must be a Scheduled Trading Day rather than an Exchange Business Day. The effect of this is that a Valuation Date can occur on a day on which the Exchange or Related Exchange does not actually open for trading, as long as it was regularly scheduled to open on that day. The actual valuation will, of course, be postponed as per the provisions of Section 6.6, but the Valuation Date can still occur on that day which will have the effect of starting the clock running for the postponement limit of eight days. In addition, Sections 4.2(a)(A), (b) and (c) from the 1996 Definitions are now set forth in Section 6.6, discussed below.

Section 6.3. General Terms Relating to Market Disruption Events. Section 6.3 sets forth general terms relating to Market Disruption Events. A Market Disruption Event is defined in Section 6.3(a) as one of three possible occurrences: (i) a Trading Disruption; (ii) an Exchange Disruption; or (iii) an Early Closure. Market Disruption Events are critical as they have the potential to impact the valuation, exercise or expiration of Transactions.

Section 6.3(b) defines Trading Disruption. Trading Disruption is a new term in the 2002 Definitions but is based on the Market Disruption Event definition as set forth in the 1996 Definitions. Trading Disruption is any suspension or limitation imposed on trading by the relevant Exchange or Related Exchange relating to the relevant Shares or relating to securities that comprise 20 percent or more of the level of the relevant Index.

Section 6.3(c) defines Exchange Disruption, which is a new term and a new concept in the 2002 Definitions. An Exchange Disruption is any event (other than an Early Closure, as discussed below) that disrupts or impairs the ability of market participants to effect transactions in, or to obtain

market values for, the relevant Shares or the securities that comprise 20 percent or more of the level of the relevant Index. In preparing this new definition, members recalled the technological problems experienced by NASDAQ in the United States when the Russell Index was being rebalanced in June 2001.

It is important to note that a Market Disruption Event arising from either a Trading Disruption or an Exchange Disruption will only occur if the Calculation Agent determines that such event is “material” at any time during the one-hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be. Under Section 4.3(a)(i) of the 1996 Definition, the period of analysis was the 30 minute period ending at the Valuation Time.

Section 6.3(d) defines Early Closure, which is a new term and a new concept in the 2002 Definitions. Early Closure is defined as the closure of the relevant Exchange or Related Exchange prior to its Scheduled Closing Time, unless the earlier closing time is announced by the relevant Exchange or Related Exchange at least one hour prior to the earlier of the actual closing time for the regular trading session and the submission deadline for orders to be entered for execution at that time. This permits parties to value Transactions in situations where an event forces the unscheduled early closure of the Exchange but there is deemed to be sufficient prior notice of the early closure to allow orderly hedge unwinds. After-hours trading is not considered for purposes of this definition.

The application of the Market Disruption Event to “any time” barrier transactions (as described in Sections 1.50 and 1.51 above) can be illustrated by the following example:

Assume a Knock-in Event occurs when the price of the Shares is at or below \$10. At the time the Share price falls to or below \$10, there must not have been a Market Disruption Event during the preceding one hour (or since the opening of the regular trading session if the Knock-in Event occurs within the first hour of trading). At 11:00 am, the Share price is \$10.05. A Market Disruption Event then occurs and continues until 11:30 am. At the conclusion of the Market Disruption Event, the Share price has fallen to \$9.95. Trading continues and at 12:30 p.m. the Share price is \$9.98. In this case the Knock-in Event does not occur until 12:30 p.m. as this is the first time where there is not a Market Disruption Event during the hour preceding the Knock-in Valuation Time. If the Share price had risen to above \$10 by 12:30 p.m., then a Knock-in Event would not have occurred.

Parties who determine that a Knock-in/Knock-out Event should not occur at any point during the “regular trading session” on an Exchange Business Day where a Market Disruption Event occurs even if it was more than one hour prior to the occurrence of the Knock-in Event may wish to consider amending Section 6.3(a) by inserting the words “the regular trading session of the Exchange prior to the occurrence of a Knock-in Event or” after the word “during” in the third line thereof.

Market Disruption Events relating to Basket Transactions involving Shares in multiple jurisdictions can raise difficult issues regarding the timing of exercise and valuation of the Transaction. The 2002 Definitions adopt one approach, but there are other ways of dealing with these issues. If parties wish to address revisions to Market Disruption Event as it relates to multi-jurisdiction Baskets, where a holiday or disruption in respect of one Exchange that affects the Basket may not be a holiday or disruption in respect of all Exchanges that affect the Basket, they may wish to consider the example and suggested additional language at Exhibit F.

In connection with Index Transactions parties should carefully consider the rules of the Exchange or Related Exchange in calculating a level for the Index where a Market Disruption Event affects less than 20% of the Shares comprising the Index. In many cases the exchange will use a

price from the prior Exchange Business Day.

If parties wish to amend the definition of Market Disruption Event for Volume Weighted Average Price (“VWAP”) trades with a single Valuation Date, they may wish to consider deleting the phrase, “at any time during the one hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be,” after the word “material” in the third line of Section 6.3(a) and replacing it with the phrase:

“at any time during the regular trading session on the Exchange or the Related Exchange, without regard to after hours or any other trading outside of the regular trading session hours, on the Valuation Date”.

In addition, parties may wish to consider adding the following proposed language at the end of Section 6.3(a):

“Notwithstanding anything to the contrary in the 2002 Definitions, to the extent that a Market Disruption Event occurs on the Valuation Date, then the Calculation Agent shall make adjustments to the number of Shares for which such day shall be the Valuation Date and shall designate the next Scheduled Trading Day as the Valuation Date for the remaining Shares. Such adjustments will be based on, among other factors, the duration of any Market Disruption Event and the volume, historical trading patterns and price of the Shares.”

The following illustrates the intended effect of this additional language: assume a Swap Transaction on 90 Shares that will have a Final Price of VWAP. If there is a Market Disruption Event during the middle third of the Scheduled Trading Day, then the Calculation Agent could use that day as the Valuation Date for two-thirds of the Number of Shares (applying the VWAP to 60 Shares) and use the next Scheduled Trading Day as the Valuation Date for the remaining Shares (applying that next day’s VWAP to 30 shares). Alternatively, the Calculation Agent could apply the VWAP to 30 Shares during the middle third time period on the next Scheduled Trading Day (assuming that there are no further Market Disruption Events during this period).

Section 6.4. Disrupted Day. Disrupted Day is a new concept in the 2002 Definitions. Section 6.4 defines Disrupted Day as any Scheduled Trading Day on which a relevant Exchange or any Related Exchange fails to open for trading during its regular trading session (*i.e.*, is not an Exchange Business Day (*see* Section 1.29 above)) or a Scheduled Trading Day on which a Market Disruption Event has occurred. Once a Disrupted Day occurs, the Calculation Agent is required to notify the parties or the other party, as the case may be. However, the Calculation Agent’s failure to notify of a Disrupted Day does not affect the validity of the occurrence and effect of such Disrupted Day on a particular Transaction.

Section 6.5. Scheduled Valuation Date. Scheduled Valuation Date was defined in Section 4.2(a) of the 1996 Definitions, but it has been amended as set forth in Section 6.5 of the 2002 Definitions. Scheduled Valuation Date means any original date that would have been a Valuation Date but for the occurrence of a Disrupted Day. The definition includes a proviso that instructs the parties to ignore for purposes of determining the Scheduled Valuation Date any postponement of a Potential Exercise Date or Expiration Date as a result of the occurrence of the Disrupted Day and to assume that the original Potential Exercise Date or original Expiration Date would have been a Valuation Date. The purpose of this clause is to avoid double counting with respect to postponement periods and to ensure that there is a maximum postponement period of eight days regardless of whether the postponement is due to a Disrupted Day occurring on a Potential Exercise Date,

Expiration Date or Valuation Date (*see* Section 6.6 below for a discussion of the interplay between Valuation Dates and Disrupted Days). For example, if an Expiration Date is also a Disrupted Day, it could be postponed for up to eight Scheduled Trading Days following the original, scheduled Expiration Date. If on that eighth day, the Buyer of an Option decides to exercise that Option notwithstanding the continued disruption, then that date will be the Exercise Date and therefore will also be a Valuation Date. Generally, a Valuation Date that is also a Disrupted Day will be postponed for a maximum of eight Scheduled Trading Days. This could potentially lead to a sixteen-day postponement period (*i.e.*, eight days for the postponement of the Expiration Date and eight days for the postponement of the Valuation Date). However, as Section 6.6 states that a Valuation Date is postponed for eight days following the Scheduled Valuation Date and the definition of Scheduled Valuation Date states that parties should ignore postponements of Expiration Dates and assume that the Scheduled Valuation Date would have been a Valuation Date (*i.e.*, that the Buyer exercised the Option on the Expiration Date), the eight day postponement period for a Valuation Date will run in tandem with that for the Expiration Date which will result in an overall maximum postponement period of eight days for exercise and valuation to occur.

Section 6.6. Consequences of Disrupted Days. If a Valuation Date is a Disrupted Day, then Section 6.6 directs what the consequences of such Disrupted Day are for purposes of valuation.

Section 6.6(a) provides that in the case of an Index Transaction or a Share Transaction, the Valuation Date is the first succeeding Scheduled Trading Day that is not a Disrupted Day. If each of the eight Scheduled Trading Days immediately following the Scheduled Valuation Date are Disrupted Days, then that eighth Scheduled Trading Day shall be the Valuation Date, notwithstanding that that day is a Disrupted Day. On such day, the Calculation Agent is instructed to determine its good faith estimate of the then current value of the relevant Share for the Share Transaction. For an Index Transaction, the Calculation Agent must determine the Index level in accordance with the formula and method for calculating the Index last in effect prior to the occurrence of the first Disrupted Day using the Exchange traded or quoted price as of the Valuation Time on that eighth Scheduled Trading Day of each security in the Index to the extent available and, otherwise, its good faith estimate of the then current value of the relevant security.

Section 6.6(b) provides that in the case of an Index Basket Transaction, the Valuation Date for each Index not affected by the occurrence of a Disrupted Day shall be the Scheduled Valuation Date and the Valuation Date for each Index affected by the occurrence of a Disrupted Day shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day. If each of the eight Scheduled Trading Days immediately following the Scheduled Valuation Date is a Disrupted Day, then that eighth Scheduled Trading Day shall be the Valuation Date for each affected Index, notwithstanding that that day is a Disrupted Day, and the Calculation Agent shall determine the level of each affected Index. The Calculation Agent shall use the formula for and method of calculating such Index last in effect prior to the occurrence of the first Disrupted Day, utilizing the Exchange-traded or quoted price as of the Valuation Time on that eighth Scheduled Trading Day to the extent available and, otherwise, its good faith estimate of the then current value of the relevant security. This enables parties to obtain a valuation for Indices that are unaffected by the occurrence of a Disrupted Day on the Scheduled Valuation Date, while postponing valuation of affected Indices either until the disruption clears or eight Scheduled Trading Days have elapsed. As discussed in Section 8.8, payment of the Option Cash Settlement Amount, the Forward Cash Settlement Amount or the Equity Amount in respect of the entire Index Basket Transaction will take place by reference to the Valuation Date that is last to occur.

Section 6.6(c) provides that in the case of a Share Basket Transaction, the Valuation Date for each Share not affected by the occurrence of a Disrupted Day shall be the Scheduled Valuation Date and the Valuation Date for each Share affected by the occurrence of a Disrupted Day shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day. If each of the eight Scheduled Trading Days immediately following the Scheduled Valuation Date is a Disrupted Day, then that eighth Scheduled Trading Day shall be the Valuation Date for each affected Share, notwithstanding that that day is a Disrupted Day, and the Calculation Agent shall determine its good faith estimate of the then current value for that affected Share. This enables parties to obtain a valuation for Shares that are unaffected by the occurrence of a Disrupted Day on the Scheduled Valuation Date, while postponing valuation of affected Shares either until the disruption clears or eight Scheduled Trading Days have elapsed. As discussed in Section 8.8, payment of the Option Cash Settlement Amount, the Forward Cash Settlement Amount or the Equity Amount in respect of the entire Share Basket Transaction will take place by reference to the Valuation Date that is last to occur.

The approach in Section 6.6 is a significant change from the 1996 Definitions in terms of the duration of the postponement period, the role of the Calculation Agent in determining valuations for Share and Share Basket Transactions and, through the scope of the definition of Disrupted Day, the breadth of coverage. In relation to the duration of the postponement period, the period has been extended to eight days from the five-day period that was found in the 1996 Definitions.

Under the 1996 Definitions, if the market was still disrupted at the end of the postponement period for a Share or Share Basket Transaction, then the Calculation Agent was supposed to determine its good faith estimate of the exchange-traded price for the relevant Share that would have prevailed on that day *but for* the Market Disruption Event. Under the 2002 Definitions, the Calculation Agent instead determines its good faith estimate of the value of the relevant Share on that day taking into consideration all the facts at hand, including the relevant disruption and any transactions effected in the over-the-counter market.

The types of disruptions that can lead to the occurrence of a Disrupted Day are a larger set than those contemplated by the definition of Market Disruption Event under the 1996 Definitions. However, the consequence of a Disrupted Day (postponement of valuation) is the same regardless of the particular disruption that caused the Disrupted Day to occur and includes disruptions caused by the closure of an Exchange or Related Exchange on a Scheduled Trading Day. The consequence of this is that there should be greater certainty that if a particular disruption leads to a postponement of valuation, then the postponement period will run without unnecessary delay, particularly if subsequent disruptions are due to the unexpected closure of the Exchange.

It should be noted with respect to Transactions on multi-exchange Indices (such as Eurostoxx) that a level for the Index may be published on a Scheduled Trading Day notwithstanding the fact that it will be a Disrupted Day in respect of an exchange that forms part of the Index. Although such Indices will generally provide levels when 50% of the exchanges comprising the Index are open, in some cases parties would prefer, for purposes of matching physical hedges, that the number of exchanges that must be open be raised to 80% of the total number of exchanges in the Index. Parties should confirm the appropriate percentage for the relevant Index to determine if 80% is the correct number in their situation. Attached in Exhibit H are suggested amendments that can be incorporated into Confirmations to raise this threshold.

Finally, parties who hedge Index Transactions with futures or options contracts should note that when market disruptions occur, the rules of some exchanges require use of the previous day's level instead of the level on the first day following the disruption. Parties may therefore wish to

amend the Consequences of Disrupted Days in their Confirmations to provide that the Valuation Date will be the immediately preceding Scheduled Trading Day that is not a Disrupted Day, rather than the immediately succeeding Scheduled Trading Day that is not a Disrupted Day.

Section 6.7. Averaging. Section 6.7 of the 2002 Definitions provides that if Averaging Dates are specified in the related Confirmation, then the provisions of Section 6.7 will apply. Section 6.7 is designed to be relatively self-contained and modifies all definitions relevant to the averaging provisions.

Averaging Date. First, Section 6.7(a) defines an Averaging Date as each date that is specified or determined in the related Confirmation. If the Averaging Date is not a Scheduled Trading Day, then the Averaging Date is the next following Scheduled Trading Day. This is similar to the approach set forth in Section 4.4(a) of the 1996 Definitions, with the exception that the reference to Exchange Business Day in Section 4.4(a) has been replaced by Scheduled Trading Day in Section 6.7(a) of the 2002 Definitions. If Averaging Dates are selected in a related Confirmation, then on a given Valuation Date, the relevant price of a Share or the level of an Index will be determined by calculating the arithmetic mean of the prices or levels on the specified Averaging Dates.

Settlement Price and Final Price. Section 6.7(b) defines what the Settlement Price or the Final Price will be in respect of a Valuation Date. This was addressed in Sections 4.4(b) and 4.4(c) of the 1996 Definitions, but a reference to Final Price has been included in Section 6.7(b) of the 2002 Definitions. Section 6.7(b)(i)-(iii) sets forth how the Settlement Price or the Final Price will be calculated for an Index Transaction, a Cash-settled Share Transaction, an Index Basket Transaction or a Cash-settled Share Basket Transaction. In general, the approach is to take the arithmetic mean of the Relevant Prices of the Index or the Shares, or the amounts for the Basket as determined by the Calculation Agent, on each Averaging Date specified in the related Confirmation. An example of Averaging Dates is as follows: The parties have an Option on a single Share and the related Confirmation specifies that each of the three Scheduled Trading Days prior to, but excluding, the Valuation Date are Averaging Dates. If the Option is exercised on a Friday, the price for the Share on the Valuation Date (which is Friday) is determined by calculating the arithmetic mean of the share price on Tuesday, Wednesday and Thursday.

Parties that decide to have Averaging apply to the Physical Settlement of Forward Transactions to which Variable Obligation is applicable may wish to consider adding:

“Settlement Price: As provided in Section 6.7(b) of the 2002 Definitions, provided that the definitions of Settlement Price in such Section are amended by deleting the words “Cash-settled”.”

Averaging Date Disruption. It is possible that one or more of the dates selected as an Averaging Date in the related Confirmation will occur on Disrupted Days, thereby preventing valuation. Section 6.7(c) offers the parties three consequences to select from in the related Confirmation if an Averaging Date is also a Disrupted Day (defined in Section 6.7(c) as “Averaging Date Disruption”). The consequences described below are materially the same as those in the 1996 Definitions.

The first consequence the parties may select is Omission (Section 6.7(c)(i)). If Omission is specified and an Averaging Date specified by the parties is a Disrupted Day, then the Averaging Date is “omitted” and is deemed not to be a relevant Averaging Date for purposes of determining the

Settlement Price or Final Price. Consider the following example: The parties to a Transaction have selected three Averaging Dates - October 4, 5 and 6. The second of those dates, October 5, is a Disrupted Day. If Omission has been specified as the consequence in the related Confirmation, then that date, October 5, is ignored for the purpose of determining the average price or level in relation to the Valuation Date. Thus, the calculation of the Settlement Price or the Final Price would be determined by the arithmetic mean of the price of the Shares or the level of the Index only for October 4 and 6.

The second consequence the parties may select is Postponement (Section 6.7(c)(ii)). If Postponement is specified and an Averaging Date specified by the parties is a Disrupted Day, then the Averaging Date is postponed for purposes of determining the Settlement Price or Final Price. Consider the following example: The parties to a Transaction have selected three Averaging Dates – October 4, 5 and 6. The second of those dates, October 5, is a Disrupted Day. If Postponement has been specified as the consequence in the related Confirmation, then the Averaging Date that would have occurred on that date, October 5, will be postponed until October 6. This means that October 6 will actually act as two Averaging Dates. Thus, the calculation of the Settlement Price or the Final Price would be determined by the arithmetic mean of the price of the Shares or the level of the Index for October 4, October 6 and again, October 6.

The third consequence the parties may select is Modified Postponement (Section 6.7(c)(iii)). If Modified Postponement is specified and an Averaging Date specified by the parties is a Disrupted Day, then the Averaging Date is postponed in the same manner as under Postponement. However, under Modified Postponement, Averaging Dates can only occur on Valid Dates. A Valid Date is defined in Section 6.7(c)(iii)(C) as a Scheduled Trading Day that is not a Disrupted Day *and* on which another Averaging Date does not, or is not deemed to, occur. Averaging Dates will be postponed for a maximum of up to eight Scheduled Trading Days after the original date that is, or would have been but for the occurrence of a Disrupted Day, the final Averaging Date. This approach is different than that set forth in Section 4.4(d)(iii) of the 1996 Definitions, where the Averaging Date could be postponed for a maximum of five Exchange Business Days.

Consider the following example under Section 6.7(c)(iii) of the 2002 Definitions: The parties to a Transaction have selected three Averaging Dates - October 4, 5 and 6. October 5 is a Disrupted Day. Here, that would move the Averaging Date forward to October 6, but since this is already specified as one of the Averaging Dates, then the Averaging Date moves to October 7.

It should be noted that Section 6.7(d) provides that if any Averaging Dates in relation to a Valuation Date occur after that Valuation Date as a result of the occurrence of a Disrupted Day, then the relevant Cash Settlement Payment Date or Settlement Date or the occurrence of an Extraordinary Event or a Potential Adjustment Event is determined by reference to the last Averaging Date as though it were that Valuation Date. In the example above, this date would be October 7.

Parties may wish to consider amendments to the definitions of Dividend Amount (*see* Section 10.1) and Notional Amount (*see* Section 1.24) if they decide to select Averaging to be applicable to their Transaction.

It should also be noted in respect of Equity Swap Transactions to which Averaging applies that whatever consequence is elected for Averaging Date Disruption may have an impact in the determination of the Equity Notional Amount (as well as on the determination of any Dividend Amount, as discussed in Section 10.1 below). For example, a party may have synthetic long exposure

under a 100 Share Total Return Swap. If there is a five day Averaging, settlement of the Total Return Equity Swap Transaction could be accomplished by assessing the Dividend Amount and the Equity Notional Amount on a pro rata basis, in this case by starting with 100 shares on the first Averaging Date and reducing this number by 20 shares on each subsequent Scheduled Trading Day that falls one Settlement Cycle following each Averaging Date. If a Share commences trading ex-dividend or a record date occurs on one of the Averaging Dates, then the Dividend Amount that is payable could be based on the number of Shares still to be valued/assessed. Parties may wish to consider addressing this situation by including the following suggested language at the end of the definition of Notional Amount (and making a related change to the term Number of Shares as used in defining the term Dividend Amount):

“provided that, solely for purposes of computing the Notional Amount, for each day commencing on the Exchange Business Day that is one Settlement Cycle following the first Averaging Date, the Equity Notional Amount for each such day will be deemed the product of (x) the total number of Averaging Dates less the number of Averaging Dates elapsed up to and including the Exchange Business Day that is one Settlement Cycle prior to such day divided by the total number of Averaging Dates and (y) the Equity Notional Amount as of the start of the related Calculation Period, and the Notional Amount for the related Calculation Period will equal the weighted average of the Equity Notional Amounts for such period. To the extent a Disrupted Day occurs on an Averaging Date, then the Calculation Agent will adjust the Notional Amount computation accordingly.”

Where the Final Price is the weighted-average price at which the Hedging Party unwinds its Hedge Position, then parties may to consider an alternative provision as discussed in Section 5.9 above. If parties adopt this approach, they should consider breakage costs, depending on the structure of their Transaction.

Parties that wish to structure their Transaction with proportional or tranching Physical Settlement (as discussed below) and the equivalent of Modified Postponement may wish to consider adding the following language:

“Settlement Calculations: For purposes of determining the Number of Shares to be Delivered if Physical Settlement is applicable, the Transaction shall be split into [insert number] components of equal size (each a “Component”), with the Number of Shares allocated accordingly. Each Component will have its own Valuation Date, with the Number of Shares to be Delivered for such Component determined as if it were a separate Transaction.”

“Valuation Date: With respect to the specified Component, the date specified below (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already a Valuation Date):

Component	Valuation Date
[number of components]	

provided that, if that date is a Disrupted Day, the Valuation Date for the relevant Component shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and which is not or is not deemed to be a Valuation Date in respect of any other Component under this Transaction; provided, further, that if the Valuation Date for the relevant Component has not occurred pursuant to the preceding proviso as of the eighth Scheduled Trading Day following the scheduled Valuation Date for such the final Component, that eighth Scheduled Trading Day shall be the Valuation Date (irrespective of whether such day is a Valuation Date in respect of any other Component under this Transaction) and the Settlement Price shall be the price determined by the Calculation Agent.”

“*Settlement Date*: One Settlement Cycle after the relevant Valuation Date.”

Adjustment to Indices. Lastly, Section 6.7(e) states that with respect to an Index Transaction and an Index Basket Transaction, an Index Modification, Index Cancellation or an Index Disruption occurs, then the consequence selected as set forth in Section 11.1(b) below will apply. Parties should also note that any elective exercise would only apply to the particular Component in question.

Section 6.8. Futures Price Valuation. Section 6.8 of the 2002 Definitions was formerly Section 4.5 of the 1996 Definitions. Section 6.8 was not significantly amended in the 2002 Definitions. If “Futures Price Valuation” is specified as applicable in the related Confirmation for an Index Transaction, then Section 6.8(a) states that the Valuation Date is defined as a date on which the Official Settlement Price is published, irrespective of whether such day is a Disrupted Day (with the exception of Section 6.8(e) discussed below).

Additional Definitions Relating to Futures Price Valuation. Section 6.8(b)(ii) defines “Official Settlement Price” as the official settlement price of any of the relevant Exchange-traded Contracts published by the Exchange or its clearing house. Section 6.8(b)(i) defines “Exchange-traded Contract” as a contract specified for the relevant Index in the related Confirmation. The parties must specify the contract by reference to the Index, the delivery month for the contract and the exchange on which it is traded.

Settlement Price and Final Price. Section 6.8(c) sets forth how the Settlement Price or the Final Price is determined on a Valuation Date. Generally, for an Index Transaction, the Settlement Price or the Final Price is the Official Settlement Price on that Valuation Date. For an Index Basket Transaction, the Settlement Price or the Final Price is the Official Settlement Price, weighted or adjusted as set forth in the related Confirmation, on that Valuation Date.

Adjustments of the Exchange-traded Contract. Section 6.8(d) provides that the Calculation Agent may be required to adjust certain variables of the Transaction, such as the Strike Price, the Forward Price or the Knock-in Price or the Knock-out Price, if the terms of the Exchange-traded Contract are changed or modified by the Exchange. This adjustment is executed by the Calculation Agent in order to preserve the economic equivalent of the payment or payments that would have been required after the date of the Exchange-traded Contract’s modifications.

In some markets (e.g. Japan) Exchange-traded Contracts are not traded on, and are not governed by the rules of the Exchange but rather the Related Exchange. In this case, parties may wish to clarify the use of the term “Exchange” in each of the second and third lines of Section 6.8(b)(ii) and the third line of Section 6.8(d), by using the following language:

“Futures Price Valuation: Applicable. For the purpose of this Transaction, Section 6.8(b) and

(d) of the 2002 Definitions shall be amended by deleting all references to “Exchange” contained therein and inserting “Related Exchange” in lieu thereof.”

Non-Commencement or Discontinuance of the Exchange-traded Contract. Section 6.8(e) states that if no Official Settlement Price exists because trading in the Exchange-traded Contract never commenced or has been permanently discontinued prior to a Valuation Date, the Official Settlement Price will be the level of the relevant Index at the close of the regular trading session on the relevant Exchange on the Valuation Date.

Corrections of the Official Settlement Price. Section 6.8(f) states that if the Official Settlement Price is corrected and published within one Settlement Cycle, either party may notify the other party of that correction. The Calculation Agent is required to determine the amount that is payable as a result of such correction and, if necessary, will adjust the terms of the Transaction to account for the correction to the Official Settlement Price. This provision is intended to be consistent with the treatment of corrections to Share prices and Index levels in Section 11.4 below.

7. ARTICLE 7 – GENERAL TERMS RELATING TO SETTLEMENT

Section 7.1. Settlement Method Election. The settlement provisions in the 2002 Definitions have been restructured from the approach in the 1996 Definitions. In the 1996 Definitions, the Cash Settlement and Physical Settlement provisions were explicitly developed for Option Transactions. At the time the 1996 Definitions were published, Equity Swap Transactions were primarily Cash-settled. Developments since 1996, particularly in Asia and Europe, indicated that the market had increased interest in Physically-settled Equity Swap Transactions. The result in the 2002 Definitions is that the settlement method has been separated from the product type, thereby allowing a greater degree of customization and flexibility. Article 7 offers provisions that are common to both Cash Settlement and Physical Settlement.

Section 7.1(a) is designed for instruments where a party (referred to as the “Electing Party”) may choose between Cash Settlement and Physical Settlement during the term of the instrument. The Electing Party must give irrevocable notice to the other party (or to the other party’s agent, if applicable) of its election to have Cash Settlement or Physical Settlement apply to the Transaction. If the Electing Party fails to deliver the notice, the settlement method is the default settlement method (the “Default Settlement Method”) specified in the related Confirmation. If no Default Settlement Method is specified, Cash Settlement will apply to Index Transactions and Equity Swap Transactions and Physical Settlement will apply to Share Forward Transactions and Share Basket Forward Transactions. Because Option Transactions do not generally have an assumed settlement method, no Default Settlement Method is specified for Option Transactions in the 2002 Definitions, so parties must specify the Default Settlement Method in the related Confirmation.

Section 7.2. Settlement Method Election Date. The notice of preferred settlement method must be given on or prior to the relevant Settlement Method Election Date, defined in Section 7.2 as the date specified as such in the related Confirmation, otherwise the Default Settlement Method will be deemed to be elected as provided in Section 7.1 above.

Section 7.3. Settlement Price. Section 7.3 defines Settlement Price in respect of the type of Transaction and whether such Transaction is Cash-settled or Physically-settled.

8. ARTICLE 8 – CASH SETTLEMENT

Section 8.1. Cash Settlement of Option Transactions. Article 5 of the 1996 Definitions addressed Cash Settlement of Option Transactions. The 2002 Definitions, however, expanded the product coverage, so that Equity Swap Transactions and Forward Transactions are included within the Cash Settlement provisions in Article 8 and this is addressed in Section 8.4 and Section 8.6 below.

For Option Transactions that are Cash-settled, Section 8.1 states that in respect of each Exercise Date, the Seller will pay the Buyer the Option Cash Settlement Amount on the Cash Settlement Payment Date for all Options exercised or deemed exercised on such Exercise Date.

Section 8.2. Option Cash Settlement Amount. Section 8.2 defines Option Cash Settlement Amount. Option Cash Settlement Amount is calculated according to whether the Option Transaction is an Index Transaction or a Share Transaction.

Section 8.3. Strike Price Differential. Section 8.3 defines one of the components used in calculating the Option Cash Settlement Amount, referred to as the Strike Price Differential.

Section 8.4. Cash Settlement of Forward Transactions. As stated in Section 1.3 above, Forward Transactions are a new product category under the 2002 Definitions. Section 8.4 covers Cash-settled Forward Transactions where Prepayment is, or is not, applicable.

Section 8.5. Forward Cash Settlement Amount. Section 8.5 defines Forward Cash Settlement Amount with respect to the type of Transaction at issue. The mechanics of prepayment as well as payment at maturity are set forth therein. Forward Cash Settlement Amounts for Forward Transactions that are “Variable Obligation” (*see* Section 4.1 above) are also addressed.

Parties should note that for Index Forward Transactions and Index Basket Forward Transactions, a number of underlying units should be specified in the Confirmation as the Multiplier. Parties may also wish to rewrite the formula in the Confirmation to specifically include a number of underlying units.

Section 8.6. Cash Settlement of Equity Swap Transactions. With respect to Equity Swap Transactions that are Cash-settled, the parties must specify the Type of Return in the related Confirmation as either “Price Return” or “Total Return”. Parties choosing the latter option must also specify “Re-investment of Dividends” as applicable if they wish it to apply (*see* Section 10.4 below). The Type of Return that is elected will determine whether, in addition to the Equity Amount, a Dividend Amount is payable by the relevant party.

Section 8.7. Equity Amount. Equity Amount was defined in Section 7.4 of the 1996 Definitions and Section 8.7 of the 2002 Definitions has not substantively amended the definitions (although certain conforming changes in terminology have been made). The Equity Amount is determined by the Calculation Agent as of the Valuation Time on the Valuation Date and is equal to the product of the Equity Notional Amount (*see* Section 1.24 above) and the Rate of Return (*see* Section 5.7 above).

Parties may wish to consider further simplifying the definition of Equity Amount as follows:

“(Final Price minus the Initial Price) multiplied by the Number of [Shares][units]”.

However, if this approach is adopted, it should be noted that certain provisions of Re-investment of Dividends might not operate effectively. Thus, parties may decide to consider this alternative Equity Amount formulation only if Re-investment of Dividends is not applicable or is otherwise modified to be compatible with this approach (*see* Section 10.4 below).

Section 8.8. Cash Settlement Payment Date. Cash Settlement Payment Date is defined in Section 8.8 as the date specified or determined in the related Confirmation. If such date is not a Currency Business Day, the Cash Settlement Payment Date is the next Currency Business Day. If no date is specified in the related Confirmation, the Cash Settlement Payment Date will fall on the date that is one Settlement Cycle following the Valuation Date. For an Index Basket Transaction or a Share Basket Transaction, if there is more than one Valuation Date as a result of a Disrupted Day, then the relevant Cash Settlement Payment Date is determined by reference to the last Valuation Date to occur. To the extent that parties have utilized the 2000 Definitions for their Swap Transaction, they may wish to define the Termination Date (as defined in the 2000 Definitions) as the final Cash Settlement Payment Date, where Equity Notional Reset is applicable, and the Cash Settlement Payment Date where Equity Notional Amount is not applicable.

9. ARTICLE 9 – PHYSICAL SETTLEMENT

Section 9.1. Physical Settlement of Option Transactions. Article 6 of the 1996 Definitions addressed Physical Settlement of Option Transactions. Section 9.1 of the 2002 Definitions addresses Physically-settled Options. With respect to a Call, Section 9.1(a) states that the Buyer will pay to the Seller the Settlement Price multiplied by the Number of Shares to be Delivered or the Number of Baskets to be Delivered. In return, the Seller will deliver to the Buyer the Number of Shares to be Delivered or the Number of Baskets to be Delivered. The Seller will also pay to the Buyer the Fractional Share Amount (*see* Section 9.7 below). With respect to a Put, Section 9.1(b) states that the Buyer will deliver to the Seller the Number of Shares to be Delivered or the Number of Baskets to be Delivered and pay the Fractional Share Amount. In return, the Seller will pay to the Buyer the Settlement Price multiplied by the Number of Shares to be Delivered or the Number of Baskets to be Delivered. Rounding in the determination of the Number of Shares to be Delivered or Number of Baskets to be Delivered is not considered in calculating the Settlement Price for Calls and Puts. Any payments or deliveries must be made on the relevant Settlement Date through the relevant Clearance System at the account or accounts specified in the related Confirmation.

Section 9.2. Physical Settlement of Forward Transactions. Section 9.2 addresses Physically-settled Forward Transactions. The payment and delivery obligations are set forth in Section 9.2. Prepayment and payment at maturity for Forward Transactions are each addressed in Section 4.1 above. Any payments or deliveries at the time of settlement at maturity must be made through the relevant Clearance System to the accounts of the Buyer or the Seller as specified in the related Confirmation.

Section 9.3. Physical Settlement of Equity Swap Transactions. Section 9.3 addresses Physically-settled Equity Swap Transactions. On each Settlement Date, the Equity Amount Payer will deliver to the Equity Amount Receiver the Number of Shares to be Delivered or the Number of Baskets to be Delivered and pay the Fractional Share Amount, if any. In return, the Equity Amount Receiver will pay the Equity Amount Payer the Equity Notional Amount. As in Sections 9.1 and 9.2, any payments or deliveries must be made on the relevant Settlement Date through the relevant Clearance System to the accounts specified in the related Confirmation.

Section 9.4. Settlement Date. Settlement Date is defined by reference to the type of Transaction at issue. If an Option Transaction is Physically-settled, the Settlement Date for delivery of the Shares is one Settlement Cycle following the Exercise Date unless a Settlement Disruption Event (defined in Section 9.8 below) prevents delivery of the Shares. See the discussion relating to Section 1.37 for a description of how the Settlement Date could be delayed to the extent a notice of exercise in respect of an Option Transaction was delivered while a Market Disruption Event was continuing.

If a Forward Transaction or an Equity Swap Transaction is Physically-settled, the Settlement Date for delivery of the Shares is the date specified in the related Confirmation. If no date is specified in the related Confirmation, the Settlement Date is the date that falls one Settlement Cycle following the Valuation Date (unless a Settlement Disruption Event, defined in Section 9.8 below, prevents delivery of the Shares).

If a Settlement Disruption Event occurs, the Settlement Date may be postponed for up to a maximum of eight (rather than ten, as set forth in the 1996 Definitions) Clearance System Business Days following the original date that would have been, but for the Settlement Disruption Event, the Settlement Date. If on the eighth Clearance System Business Day a Settlement Disruption Event still exists and the Shares can be delivered in any other commercially reasonable manner, then the Settlement Date is the first date on which settlement can occur. However, if such Shares cannot be delivered in any other commercially reasonable manner, the Settlement Date is postponed until delivery can be effected through the relevant Clearance System or in any other commercially reasonable manner. This eight day time period is consistent with the treatment of other disruptions in the 2002 Definitions, such as Market Disruption Events (*see* Section 6.6 above).

With respect to Share Basket Transactions, if a Settlement Disruption Event affects some but not all of the Shares in the Basket, the Settlement Date for the Shares not affected by the Settlement Disruption Event is the original Settlement Date, and the Calculation Agent shall determine in its discretion the appropriate pro rata portion of the amount to be paid by the relevant party in respect of that partial settlement. For those Shares affected by the Settlement Disruption Event, the Settlement Date is as set forth in the preceding paragraph. This is in contrast to Cash-settled Share Basket Transactions, where in the case of the occurrence of a Disrupted Day, settlement of the entire Basket would be delayed.

Section 9.5. Number of Shares to be Delivered. Section 9.5 defines the Number of Shares to be Delivered in terms of the type of Transaction at issue. Parties should note that the formula to calculate the Number of Shares to be Delivered for Forward Transactions for which "Variable Obligation" is applicable is premised on the fact that the Seller does not retain any appreciation in the price of the Shares above the Forward Cap Price. This formula will need to be amended if the Transaction is intended to replicate the payoff profile of similar public market derivative instruments where the Seller retains a percentage of the appreciation in the Shares above the Forward Cap Price. In such cases parties may wish to consider the following language as a replacement for the formula in Section 9.5(c)(iii):

$$\frac{\text{Forward Floor Price}}{\text{Forward Cap Price}} \times \text{Number of Shares}$$

Section 9.6. Number of Baskets to be Delivered. Section 9.6 defines the Number of Baskets to be Delivered in terms of the type of Transaction at issue. Parties should note that the formula to calculate the Number of Baskets to be Delivered for Forward Transactions for which

"Variable Obligation" is applicable is premised on the fact that the Seller does not retain any appreciation in the price of the Basket above the Forward Cap Price. This formula will need to be amended if the Transaction is intended to replicate the payoff profile of similar public market derivative instruments where the Seller retains a percentage of the appreciation in the Basket above the Forward Cap Price. In such cases parties may wish to consider the following language as a replacement for the formula in Section 9.6(c)(iii):

$$\frac{\text{Forward Floor Price}}{\text{Forward Cap Price}} \times \text{Number of Baskets}$$

Section 9.7. Fractional Share Amount. Fractional Share Amount is a new term in the 2002 Definitions. Fractional Share Amount is an amount representing the fractional Share resulting from the calculation of the Number of Shares to be Delivered or the Number of Baskets to be Delivered, as determined by the Calculation Agent, multiplied by either the Settlement Price or the Final Price. It should be noted that the "Settlement Price" used to calculate the Fractional Share Amount is the "Settlement Price" applicable to the Cash-settled Transactions. A Fractional Share Amount may also apply as a result of a Potential Adjustment Event or the application of the formula for Forward Transactions for which "Variable Obligation" is applicable.

Section 9.8. Settlement Disruption Event. Section 6.5 of the 1996 Definitions defined Settlement Disruption Event and the definition has not been amended in Section 9.8 of the 2002 Definitions. A Settlement Disruption Event is an event beyond the control of the parties that impacts the ability of the relevant Clearance System to transfer the relevant Share.

Section 9.9. Expenses. Section 9.9 provides that the expenses relating to the transfer of Shares are payable by the party that would pay such expenses according to market practice for the sale of such Shares settled through the relevant Clearance System in one Settlement Cycle.

Section 9.10. Delivery Versus Payment. Section 9.10 states that if there is a corresponding payment obligation on a Settlement Date and the relevant Clearance System permits settlement to occur on a delivery versus payment basis, then settlement will occur on such basis.

Section 9.11. Representation and Agreement. Section 9.11 of the 2002 Definitions has been significantly expanded from the approach taken in Section 6.8 in the 1996 Definitions. Section 9.11 requires that the party obligated to deliver Shares under a Transaction agrees and represents that it will convey and has conveyed good title to those Shares and that such Shares are free from any liens, charges, claims or other encumbrances, as well as any other restrictions. Further, the party obligated to deliver Shares under a Transaction agrees and represents that there are no: (i) consent or approval requirements; (ii) limitations on the type or status of any purchaser, pledgee, assignee or transferee of such Shares; (iii) requirements for the delivery of any certificate, approval, consent, agreement, opinion of counsel, notice or other document; and (iv) registration or qualification requirement or prospectus delivery requirement. The party also represents that the Shares are properly in book-entry form to the extent appropriate for the relevant Clearance System.

It should be noted that Section 9.11 would need to be modified if a party agrees to accept restricted shares (*e.g.*, shares that may be sold by the receiver pursuant to Rule 144 of the United States Securities Act of 1933, as amended), shares subject to other liens or shares not already in book-entry form.

Section 9.12. Indemnification for Failure to Deliver. Section 9.12 provides that if a party has failed to deliver Shares under a Transaction, such party will indemnify the other party on demand for any costs, losses or expenses (including the costs related to borrowing the relevant Shares) resulting from such failure. Consequential or special damages are not covered by Section 9.12. Section 9.12 has been amended in the 2002 Definitions as compared to Section 6.9 in the 1996 Definitions in light of the new measure of damages provision in the 2002 ISDA Master Agreement.

10. ARTICLE 10 - DIVIDENDS

Section 10.1. Dividend Amount. When the 2002 Definitions were being prepared, members asked ISDA to consolidate and to refine the dividend provisions, but it is important to note that the revision of the provisions relating to dividends has been limited in scope, primarily as a result of the jurisdiction and transaction-specific nature of the related issues.

Section 10.1 of the 2002 Definitions defines Dividend Amount. Section 7.12(a) of the 1996 Definitions left it to the parties to a Transaction to define Dividend Amount in the related Confirmation. It was not possible to create a single definition of Dividend Amount that would be applicable to a broad variety of transactions and therefore Dividend Amount is still, essentially, defined by the parties in the related Confirmation. However, the 2002 Definitions provide some elections and other standard provisions that should assist parties in drafting the definition.

Section 10.1 offers three elections that parties can choose to define when a dividend becomes part of the Dividend Amount based on whether a relevant date occurs during the Dividend Period. The first election is Record Amount, which provides that a dividend is part of the Dividend Amount if the record date for determining shareholders entitled to the dividend occurs during the Dividend Period. The second possibility is Ex Amount, which includes a dividend if the date that the Shares have commenced trading ex-dividend on the Exchange occurs during the Dividend Period. The third possibility is Paid Amount, which includes a dividend if the date a dividend is actually paid by the Issuer to the holders of record of a Share occurs during the Dividend Period. If a dividend is to be included in the Dividend Amount under any of the three elections, the amount included will be 100% of the gross cash dividends before the withholding or deduction of taxes and excluding any tax credits, refunds or benefits. Extraordinary Dividends and, for Forward Transactions where Prepayment is applicable, Excess Dividend Amounts are also excluded from the definition of Dividend Amount, unless the parties' Confirmation provides otherwise. Whichever election is selected, if any, parties should note in particular that although Record Amount, Ex Amount and Paid Amount are defined as per Share amounts, Dividend Amount must still be defined as an aggregate amount, rather than a per Share amount, in the related Confirmation. This is provided for in the Confirmation templates published on ISDA's website (*see* Section B.2 above).

In examining the Averaging provisions discussed in Section 6.7 above, parties should consider the consequences of their election as it relates to Dividend Amount. For example, a party may have synthetic long exposure under a 100 Share Total Return Equity Swap Transaction. If a Share commences trading ex-dividend or a record date occurs on one of the Averaging Dates, then the Dividend Amount that is payable could be based on the number of Shares still to be valued/assessed. If there is a five day Averaging, settlement of the Total Return swap could be accomplished by assessing the Dividend Amount and the Notional Amount on a pro rata basis, in this case by starting with 100 Shares on the first Averaging Date and reducing this number by 20 Shares on (i) each subsequent Averaging Date (where Ex Amount is selected or Paid Amount and Second Period is

selected) or (ii) each subsequent Scheduled Trading Day that falls one Settlement Cycle following each Averaging Date (where Record Amount is selected or Paid Amount and First Period is selected). Parties may wish to consider addressing this situation by including the following suggested language at the end of the definition of Dividend Amount:

“; provided that the Calculation Agent shall make appropriate adjustments to the Number of Shares [if a record date occurs on or following the first Averaging Date]¹[if Shares commence trading ex-dividend]².”

Parties who amend the definition of Final Price to “The weighted average price per Share at which the Hedging Party unwinds its Hedge Position(s)” may wish to consider adding “based on the Hedging Party's Hedge Position on the relevant Averaging Date” at the end of this proviso to make it clear that the Dividend Amount that is payable is based on the number of Shares included as a hedge.

For certain dividend enhanced transactions parties may wish to amend the dividend percentage in the definition of "gross cash dividend". Currently the dividend percentage is defined as 100% but under certain tax regimes parties may wish to alter this. Parties may wish to consider the following language as a starting point:

“Section 10.1[(a)][(b)][(c)] of the 2002 Definitions shall be amended by replacing the percentage "100%" with the percentage "[insert number]%”.

In addition, if parties make this change, then any adjustment for Extraordinary Dividends may need to be made using the same modified percentage. Parties may consider using the following language as a starting point to customize their transaction:

“Extraordinary Dividends: The adjustments made by the Calculation Agent under Section 11.2(c) shall include, without limitation, treating the relevant cash amount as a “gross cash dividend” for the purposes of determining Dividend Amount(s) payable hereunder. For the avoidance of doubt such amount shall represent a sum before the withholding or deduction of taxes at the source by or on behalf of any applicable authority having power to tax in respect of such a dividend, and shall exclude any imputation or other credits, refunds or deductions granted by any applicable authority having power to tax in respect of such extraordinary cash dividend and any taxes, credits, refunds or benefits imposed, withheld, assessed or levied thereon. The final sentence of Section 10.1 of the 2002 Definitions shall be deleted.”

The following example illustrates the intent of this language: Assume parties have amended Section 10.1(a) to be 95%. If the Issuer pays a \$10 Extraordinary Dividend with a record date during a Dividend Period, then in this example the Calculation Agent will include \$9.50 in the amount payable under the Transaction representing 95% of the “gross cash dividends”.

Parties may wish to consider excluding such amounts from the definition of Potential Adjustment Event in Section 11.2(e) in addition to including the language above so as to provide certainty as to their treatment under the 2002 Definitions and the Transaction.

Parties may wish to consider adding a dividend clawback provision, which would apply

¹ Where Record Amount is selected or Paid Amount and First Period is selected.

² Where Ex Amount is selected or Paid Amount and Second Period is selected

where a Dividend Amount has been paid through under a Transaction on the relevant Dividend Payment Date but the corresponding dividend is not actually paid in full by the Issuer. Parties may wish to consider the following sample provision:

“Dividend Recovery: In the event that (i) the amount actually paid by the Issuer to holders of record of the Shares in respect of any gross cash dividend declared by the Issuer to holders of record of the Shares (a “Relevant Dividend”) is not equal to such Relevant Dividend (a “Dividend Mismatch Event”) or (ii) the Issuer fails to make any payment in respect of such Relevant Dividend by the third Currency Business Day following the relevant due date (the “Reimbursement Date”), then the Calculation Agent shall determine the appropriate correction or repayment, if any, to be made to account for such non-payment or, as the case may be, Dividend Mismatch Event.

The Calculation Agent may (but need not) determine the appropriate correction or repayment, if any, to be made by a party to account for such non-payment or, as the case may be, Dividend Mismatch Event, and determine the date such payment should be made together with interest on the amount to be repaid determined on the basis of the cost of funds of the party that made the relevant payments.

The parties expressly acknowledge and agree that where the amount actually paid by the Issuer to holders of record of the Shares in respect of any Relevant Dividend is paid or scheduled to be paid after the termination of the Transaction the provisions of this Section shall apply and remain in full force and effect notwithstanding the fact that the Cash Settlement Payment Date, Settlement Date or Early Termination Date has occurred.”

Parties should consider the potential credit risk created by this provision and may wish to consider whether such amounts are adequately covered under the definition of “Exposure” under any relevant credit support document.

Section 10.2. Dividend Payment Date. Dividend Payment Date is defined in Section 10.2 as each date specified or determined in the related Confirmation during the Dividend Period. If a Dividend Payment Date is not specified in the related Confirmation, the Dividend Payment Date is the Cash Settlement Payment Date or the Settlement Date relating to the end of the Dividend Period.

Section 10.3. Dividend Period. The definition of Dividend Period in Section 7.12(c) of the 1996 Definitions has been amended in Section 10.3 of the 2002 Definitions to be either the First Period or the Second Period, as specified by the parties in the related Confirmation. First Period is defined in Section 10.3(a) as the period from, and including, one Cash Settlement Payment Date or Settlement Date to, but excluding, the next following Cash Settlement Payment Date or Settlement Date. Second Period is defined in Section 10.3(b) as each period from, but excluding, one Valuation Date to, and including, the next Valuation Date. Thus, First Period focuses on payment or settlement cycles while Second Period relates to Valuation Dates. Second Period is more similar to the approach set forth in Section 7.12(c) of the 1996 Definitions. If the parties do not specify a Dividend Period in the related Confirmation, the Second Period is the default Dividend Period.

Section 10.4. Re-investment of Dividends. The parties must specify in the related Confirmation if “Re-investment of Dividends” applies. If “Re-investment of Dividends” is applicable, Dividend Amounts under Equity Swap Transactions will not be re-invested until the next Cash Settlement Payment Date. This approach delays any economic exposure to the Shares in which the Dividend Amount is to be re-invested between payment of that Dividend Amount and the Cash

Settlement Payment Date.

In certain circumstances, parties to an Equity Swap Transaction may wish for reinvestment of dividends to occur at or around the same time as the dividend is paid, instead of on the Cash Settlement Payment Date. To make a dividend eligible for immediate reinvestment, the Dividend Period would generally need to be each day in the Term of the Transaction. The Number of Shares would then be increased by the number of Shares that could be bought with the Dividend Amount at the closing price on the date that the dividend is actually paid to shareholders of record, and the Calculation Agent would adjust the Initial Price (decreasing it to an amount equal to the quotient of the relevant Equity Notional Amount divided by the adjusted Number of Shares), and any other variable, accordingly.

As an example, suppose an Equity Swap Transaction on 100 shares of Company X with a Calculation Period of one year. Assume that the floating leg of the Transaction would pay USD-LIBOR-BBA plus 50 basis points. If, seven months into the Calculation Period, the Issuer declared a dividend to holders of record as of a certain date, and the dividend as paid could purchase five new Shares, there would be two calculations constituting the Equity Amount: one calculation in respect of the first seven months on 100 Shares, and a second in respect of the remaining five months on 105 Shares. The Floating Amount would be calculated based on 100 Shares at an interest rate of USD-LIBOR-BBA (calculated on the Reset Date) plus 50 basis points for one year. This is because the dividend payment, and not the Equity Amount Payer's funds, are used to purchase the additional five Shares.

If the parties wished for reinvestment to take place on these terms, they could use the Confirmation provisions below as a starting point for customizing in accordance with the terms of the particular Transaction.

“Dividend Period: Each Currency Business Day during the [First Period][Second Period].

Dividend Payment Date: [insert date]

Re-investment of Dividends: Applicable; provided that Section 10.4 of the 2002 Definitions will be amended as follows:

“In respect of an Equity Amount Payer in relation to each relevant Dividend Payment Date, a cash dividend declared by the Issuer to holders of record of the Shares will not be included in the determination of the Equity Amount on the relevant Valuation Date, but the Calculation Agent will, for purposes of each subsequent Cash Settlement Payment Date, adjust the Equity Notional Amount relating to that Equity Amount Payer by adding to the Equity Notional Amount the Dividend Amount relating to that Equity Amount Payer on that Dividend Payment Date, and will make corresponding adjustments to the Number of Shares and any other term of the Transaction to account for the increase in the Equity Notional Amount as described above and the price of the Shares as of the Valuation Time on the Dividend Payment Date, however the Notional Amount will remain unchanged.”

Parties who modify the definition of Equity Amount as described in the commentary to Section 8.7 above may wish to consider modifying the suggested language in the paragraph above to remove references to the Equity Notional Amount, so that it is the Number of Shares and any other relevant term of the Transaction that are adjusted as described above.

Section 10.5. Dividend Payment Obligations Relating to Physically-settled Option Transactions. If an Option Transaction is Physically-settled, Section 10.5 provides that any dividends on the Shares will be payable to the party that would receive such dividends in accordance with market practice for the sale of such Shares that are settled through the relevant Clearance System.

Section 10.6. Extraordinary Dividend. Section 10.6 defines Extraordinary Dividend, a new defined term in the 2002 Definitions, although the term had always been relevant in the 1996 Definitions for purposes of determining whether a Potential Adjustment Event (*see* Section 11.2 below) had occurred. An Extraordinary Dividend is an amount per Share as specified or determined in the related Confirmation. If no Extraordinary Dividend is specified in the related Confirmation, the Calculation Agent must determine whether a dividend qualifies as an Extraordinary Dividend.

If parties would prefer a more detailed provision, they may consider using the following expanded definition of Extraordinary Dividends:

“Extraordinary Dividend” means, as determined by the Calculation Agent, (i) any cash dividend declared on the Shares at a time when the Issuer has not previously declared or paid dividends on such Shares for the prior four quarterly periods; (ii) any increase by more than [insert number]% from the previous period, in the dividends paid on the Shares; (iii) any payment by the Issuer to shareholders that the Issuer announces will be an extraordinary dividend; (iv) any payment by the Issuer to shareholders out of the Issuer's capital and surplus; or (v) any other “special” cash or non-cash dividend on, or distribution with respect to, the Shares which is, by its terms or declared intent, declared and paid outside the normal operations or normal dividend procedures of the relevant Issuer.”

Section 10.7. Excess Dividend Amount. Section 10.7 defines Excess Dividend Amount, a new term in the 2002 Definitions. An Excess Dividend Amount means 100 percent of the Extraordinary Dividend per Share based on the Record Amount, the Ex Amount or the Paid Amount as specified in the related Confirmation. As noted in Section 10.1 above, Record Amount, Ex Amount and Paid Amount are per Share amounts so the Excess Dividend Amount must still be defined as an aggregate amount in the related Confirmation. As stated in Section 10.1 above, Excess Dividend Amounts are generally not to be considered “gross cash dividends”, unless the parties explicitly provide otherwise in the related Confirmation. This provision applies automatically to Forward Transactions for which Prepayment is applicable, but parties may wish to use this provision to customize other Transactions, such as Option Transactions (*see* Section 11.2 below).

As an example of the application of Excess Dividend Amount to Forward Transactions for which Prepayment is applicable, suppose an Issuer declares a dividend of ten cents on a Share that in the usual course pays three cents per Share. If this dividend payment is treated by the Calculation Agent as an Extraordinary Dividend to the extent of seven cents per Share the Seller will be required to pay the Excess Dividend Amount of seven cents multiplied by the Number of Shares (not Number of Shares to be Delivered) as part of its settlement obligations. Note that the Extraordinary Dividend is still a Potential Adjustment Event that may result in an adjustment under Section 11.2 in addition to requiring a payment pursuant to Section 8.4(b) or Section 9.2 above. For example, if Calculation Agent Adjustment were to apply, the Calculation Agent might decide that the Forward Floor Price and/or Forward Cap Price should be reduced by the forward value of seven cents.

In the case of Forward Transactions for which Prepayment is applicable, parties may also wish to provide that any Excess Dividend Amount will accrue interest between the time the Excess Dividend Amount is paid by the Issuer and the Cash Settlement Payment Date or Settlement Date, as the case may be.

11. ARTICLE 11 – ADJUSTMENTS AND MODIFICATIONS AFFECTING INDICES, SHARES AND TRANSACTIONS

Section 11.1. Adjustments to Indices. Article 8 in the 1996 Definitions addressed adjustments to an Index and Section 9.1 addressed adjustments to Share Transactions and Share Basket Transactions. Those provisions have been consolidated in Article 11 of the 2002 Definitions.

Adjustments to an Index would be required when there has been some material change that affects the ability of the Calculation Agent to determine the Index level in a way that is consistent with the parties' intentions at the outset of the Transaction. Section 11.1 addresses two categories of adjustment to an Index that may be required: a successor sponsor to the Index is announced or the Index is replaced; or the Index has been modified, cancelled or disrupted.

Successor Sponsor to an Index Sponsor or Replacement of Indices. Section 11.1(a) addresses the situation where an Index in respect of an Index Transaction or an Index Basket Transaction is not calculated and announced by the Index Sponsor, but is calculated and announced by a successor sponsor to such Index, or the Index is replaced. If the Calculation Agent can determine that the successor sponsor is acceptable or that the replacement index uses the same or a substantially similar formula for calculating the Index, then that index is the "Successor Index".

Index Modification, Index Cancellation and Index Disruption. Section 11.1(b) expands upon Section 8.1(b) of the 1996 Definitions, in which only modifications to an Index were addressed. Section 11.1(b) offers three potential events (each an "Index Adjustment Event") that may require that an adjustment to an Index be made or, in some cases, for the Transaction to be cancelled. First, there could be a modification of the Index (an "Index Modification") prior to the Valuation Date. For example, the Index Sponsor could materially change the formula or the method used to calculate the Index. Second, the Index Sponsor could permanently cancel the Index and no Successor Index is identified. This is referred to as "Index Cancellation". Third, there could be a disruption to the Index that impacts the ability of the Index Sponsor to calculate the Index on a particular date. This is referred to as an "Index Disruption".

If an Index Modification, Index Cancellation or Index Disruption occurs, certain adjustments are required. The parties are required to select from a menu of three possible consequences for each of the three types of Index Adjustment Event. The first possible consequence is Calculation Agent Adjustment (Section 11.1(b)(A)). Under Calculation Agent Adjustment, if the Calculation Agent determines that the Index Adjustment Event has a material effect on the Index Transaction, the level of the Index would be determined in accordance with the formula or method last in effect prior to the Index Adjustment Event. In the 1996 Definitions, the Calculation Agent was limited to determining the relevant Settlement Price or Final Price, but the variables that the Calculation Agent may consider have been expanded to also include Strike Price, Forward Price, Forward Floor Price, Forward Cap Price, Knock-in Price and Knock-out Price.

The second possible consequence is Negotiated Close-out (Section 11.1(b)(B)). Under Negotiated Close-out, the parties have the ability to terminate the Transaction on mutually acceptable

terms, but they are not required to do so. If the parties do not agree to mutually acceptable terms, the Transaction continues on the Index in effect as of the time any relevant calculation needs to be made (e.g. using the materially changed formula or method in the case of an Index Modification).

The third consequence is Cancellation and Payment (Section 11.1(b)(C)). The timing of the Cancellation and Payment is dependent upon which type of Index Adjustment Event has occurred. If an Index Modification has occurred, either party may cancel the Transaction following announcement of the Index Modification, provided two Scheduled Trading Days' notice is given. Less than two Scheduled Trading Days' notice may be given if the Index Sponsor provides less notice in order that the termination occurs no later than the effective date of the Index Modification. If an Index Cancellation has occurred, the Transaction will be cancelled on the later of the Exchange Business Day immediately prior to effectiveness of the Index Cancellation and the date the Index Cancellation is announced by the Index Sponsor. Lastly, if an Index Disruption has occurred, the Transaction will be cancelled on the Valuation Date. In the case of each Index Adjustment Event, if the Transaction is an Option Transaction, the amount to be paid will be calculated on the basis of "Calculation Agent Determination" (see Section 12.7(b)(ii) below) and if it is a Forward Transaction or an Equity Swap Transaction, a Cancellation Amount will be payable as provided in Section 12.7(c).

It should also be noted that Partial Cancellation and Payment is not an option unless the parties add it to the related Confirmation. Parties may consider the following language if they decide to apply Partial Cancellation and Payment to an Index Basket Transaction in this situation:

"For the purposes of Section 11.1 of the 2002 Definitions, Partial Cancellation and Payment will be deemed to mean that the provisions of Section 11.1(b)(C) will apply solely to the Index affected by the Index Adjustment Event and the remainder of the Index Basket Transaction will continue with the Basket comprising Indices that are not affected, and the Calculation Agent will adjust any relevant terms if necessary to preserve as nearly as practicable the economic terms of the Transaction for the remaining Basket."

Any Transaction cancelled as a result of an Index Adjustment Event (Index Modification, Index Cancellation and Index Disruption collectively) will be valued using the formula or method to calculate the Index in effect immediately prior to such Index Adjustment Event.

Section 11.2. Adjustments to Share Transactions and Share Basket Transactions. Section 11.2 addresses adjustments to Share Transactions and Share Basket Transactions that may be required if the Calculation Agent determines that an event that has a dilutive or concentrative effect on the theoretical value of the relevant Shares.

Methods of Adjustment. There are two Methods of Adjustment specified in Section 11.2. The first is "Options Exchange Adjustment" (Section 11.2(b)). If Options Exchange Adjustment is specified in the related Confirmation, then, following an adjustment made by the Options Exchange to options on the relevant Shares, the Calculation Agent will make corresponding adjustments to a variety of variables relating to the relevant Shares traded on an Options Exchange, to account for the dilutive or concentrative effect on the theoretical value of the Shares depending on the type of Share Transaction or Share Basket Transaction at issue.

The second Method of Adjustment is "Calculation Agent Adjustment" (Section 11.2(c)). If Calculation Agent Adjustment is specified in the related Confirmation or no Method of Adjustment is specified, then following the Issuer's declaration of a Potential Adjustment Event (discussed below),

the Calculation Agent will determine whether such Potential Adjustment Event has a dilutive or concentrative effect on the theoretical value of the relevant Shares and, if so, will make corresponding adjustments to a variety of variables relating to the relevant Shares. The Calculation Agent may look to any adjustments made by an options exchange with respect to options on the relevant Shares, but is not required to do so. However, no adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Share.

Options Exchange. “Options Exchange” is defined in Section 11.2(d) as the exchange or quotation system specified in the related Confirmation. Any successor or substitute exchange or quotation system to which trading in options on the relevant Shares has temporarily relocated may also qualify as an Options Exchange, provided the Calculation Agent can determine that there is comparable liquidity on the temporary substitute exchange or quotation system as on the original Options Exchange.

Potential Adjustment Event. “Potential Adjustment Event” is defined in Section 11.2(e). The definition clarifies that set forth in Section 9.1(e) of the 1996 Definitions, although it should be noted that clause (e)(ii)(C) and (e)(vi) are new to the 2002 Definitions as specified events rather than subsumed within a general provision as was the case in the 1996 Definitions. Potential Adjustment Events encompass a wide variety of events, including the subdivision, consolidation or reclassification of Shares, Extraordinary Dividends (which now may be defined in the related Confirmation or left to the Calculation Agent to determine (*see* Section 10.6 above)), an Issuer’s repurchase of Shares and other events that may have a dilutive or concentrative effect on the theoretical value of the relevant Shares. Specifically, as indicated above, the triggering of any shareholder rights plan or arrangement directed against hostile takeovers and involving the distribution of securities at a below-market price (sometimes referred to as a “poison pill”) is now separately included in Section 11.2(e)(vi) as a Potential Adjustment Event.

In many cases adjustments under Section 11.2 for Extraordinary Dividends (*see* Section 10.1 above) take the form of a reduction in the variables specified in (A), (B) and (C) therein by an amount equal to the future value of the Extraordinary Dividend based on the remaining term of the Transaction.

However parties may also decide that, in lieu of such adjustments, cash amounts equal to all Extraordinary Dividends (not the future value thereof) are to be paid over contemporaneously. In these cases parties may wish to consider starting with the following language and customizing it for their particular Transaction:

“Upon occurrence of an Extraordinary Dividend, the parties agree that, in lieu of an adjustment to the variables specified in (A), (B) and (C) in Section 11.2 of the 2002 Definitions, the Calculation Agent will treat the amount of such Extraordinary Dividend as an Excess Dividend Amount as if the parties had elected [“Record Amount”][“Ex Amount”][“Paid Amount”] and [“First Period”][“Second Period”] and will determine the party required to pay such Excess Dividend Amount. Notwithstanding any provision to the contrary in the 2002 Definitions, the Excess Dividend Amount multiplied by the Number of Shares will be payable on the date that such [Record Amount][Ex Amount][Paid Amount] is paid by the Issuer to holders of record of a Share.”

Finally, in the event that parties intend for cash amounts representing all dividends (both Extraordinary Dividends and ordinary cash dividends) to be payable contemporaneously then they may consider starting with the language above, customizing it for their particular Transaction and defining “Extraordinary Dividend” as all “gross cash dividends” in excess of “[$\$$]0.00 per Share”.

Section 11.3. Adjustments to Certain Share Transactions and Share Basket Transactions in European Currencies. Section 11.3 provides that if the Shares relating to a Share Transaction or Share Basket Transaction were originally quoted, listed and/or dealt as of the Trade Date in a currency of a European Union member state that has not adopted the euro, but after the Trade Date become quoted, listed and/or dealt exclusively in euro, the Calculation Agent will adjust certain variables relevant to the terms of the Transaction in order to preserve the economic terms of the Transaction. Any currency conversion required for purposes of adjustment will be at an appropriate mid-market spot rate of exchange determined by the Calculation Agent as of the Valuation Time. Section 11.3 was not included in the 1996 Definitions because the single European currency had not come into use at that time.

Section 11.4. Correction of Share Prices and Index Levels. Section 11.4 states that if a price or level published by an Exchange or an Index Sponsor is utilized for making a calculation in relation to a Transaction and such price or level is subsequently corrected and published within one Settlement Cycle (*see* Section 1.37 above), either party may notify the other of the correction. The Calculation Agent will determine the amount that is payable or deliverable as a result of that correction and, if necessary, will adjust the terms of the Transaction. This approach is different than that set forth in Section 8.2 of the 1996 Definitions, which was limited to Indices and under which the timeframe for assessment was 30 days following the original publication of the relevant price or level. During preparation of the 2002 Definitions, members recalled the technological problems experienced by NASDAQ in June 2001 when the Russell Index was being rebalanced. In particular, the last sale price for several stocks was reported on Friday, June 29, 2001 and was subsequently corrected on Monday July 2 and/or Tuesday July 3, 2001. Thus, members agreed that it was important to address this event by the aforementioned amendment.

12. ARTICLE 12 – EXTRAORDINARY EVENTS

Section 12.1. General Provisions Relating to Extraordinary Events. Section 12.1 sets forth the following general definitions that relate to Extraordinary Events:

Extraordinary Event. Section 12.1(a) defines Extraordinary Event as a Merger Event, Tender Offer, Index Adjustment Event, Nationalization, Insolvency, Delisting or any applicable Additional Disruption Event. Thus, the range of Extraordinary Events covered under Article 12 has been significantly expanded to cover Tender Offers, two new events covered by Index Adjustment Event, Delisting and a series of new potential Additional Disruption Events (*see* Section 12.9 below).

Merger Event. Section 12.1(b) defines Merger Event. The Merger Event definition resembles Section 9.2(a) of the 1996 Definitions, but a broader range of events are included in the amended definition. For example, Section 12.1(b) still includes as a Merger Event the reclassification or change of the relevant Shares and a consolidation, amalgamation or merger of the Issuer, but binding share exchanges of the Issuer are also now included. In addition to takeover offers for the relevant Shares, the amended definition of Merger Event includes tender offers, exchange offers, solicitations, proposals or other events by an entity or a person to purchase or obtain 100 percent of

the outstanding Shares of the Issuer. Reverse mergers are also included in the definition of Merger Event in Section 12.1(b). A reverse merger occurs where the acquiring entity is not the surviving entity. Although market participants agreed that this type of event was a merger, a reverse merger where the relevant Issuer was the surviving entity was not technically picked up in the definition of Merger Event in the 1996 Definitions.

Merger Date. Merger Date is defined in Section 12.1(c) as the closing date of the Merger Event. If a closing date cannot be determined under local law, then the Merger Date is determined by the Calculation Agent. The definition of Merger Date has been revised from that set forth in Section 9.2(b) of the 1996 Definitions, where it was defined by reference to the date on which all holders of the relevant Shares agreed or became obligated to transfer their Shares. In a market where the Merger Date and the actual trading of the New Shares are expected to be contemporaneous (e.g., Japan), the Calculation Agent should determine the Merger Date as the Exchange Business Day immediately following the last trading day of the (original) Share on the Exchange.

Tender Offer. Tender Offer is a new definition in the 2002 Definitions. Tender Offers were addressed in the 1996 Definitions, but only on the assumption that the tender offer at issue resulted in the transfer of 100 percent of the Shares or, in other words, a Merger Event. In the intervening six years, tender offers became a more common phenomenon and, in the United States in particular, partial tender offers became more prevalent as a means of acquiring control of the target. Section 12.1(d) defines Tender Offer as a takeover offer, tender offer, exchange offer, solicitation, proposal or other event that results in one entity or person purchasing or obtaining (or having the right to obtain) greater than 10 percent and less than 100 percent of the outstanding voting shares of the Issuer. The threshold calculation is determined by the Calculation Agent, based upon the filings made by the Issuer with governmental or self-regulatory agencies, or any other information the Calculation Agent finds to be relevant. Because of the jurisdiction-specific nature of Tender Offers and the circumstances that will trigger them, the provisions in the 2002 Definitions relating to Tender Offers and their consequences will only apply if elected in the related Confirmation.

Some parties may not be as concerned with changes in control at lower levels of share ownership, but may be concerned that, where a tender offer is made and a high percentage, though not all, of the Issuer's outstanding Shares are tendered, the corporate law in the jurisdiction of the Issuer could prohibit the offeror from eliminating or reducing the remaining minority interest (known as a "squeeze-out"). This would mean that the characteristics of the Shares, including liquidity, would approach those of the offeror, but because 100% of the Shares had not been tendered, a Merger Event would not be triggered. To the extent parties are entering into Transactions on Shares in jurisdictions that do not permit minority squeeze-outs, but are not concerned with minority share acquisitions and changes in control, they may wish to raise the lower threshold in the definition of Tender Offer from 10% to a higher percentage of the Voting Shares.

Parties should consider examining the structure of the underlying equity since for some companies, the publicly traded stock may not have the voting majority. In such cases, or if the parties are focused on the effect on the Shares underlying the Transaction rather than on the Issuer's voting shares more generally, parties may wish to consider amending the definition of Tender Offer by replacing the phrase "outstanding voting shares of the Issuer" with "outstanding Shares" and making a corresponding change to Tender Offer Date and Announcement Date.

Tender Offer Date. Tender Offer Date is defined in Section 12.1(e) as the date on which voting shares in a certain percentage threshold are actually purchased or obtained with respect to a

Tender Offer. The Calculation Agent makes the determination.

Share-for-Share. Like Section 9.3(a)(i)-(iii) of the 1996 Definitions, Section 12.1(f)-(h) sets forth the three basic types of Merger Events grouped according to the consideration offered for the Shares by the offeror or acquiror. For each type of Merger Event or Tender Offer, the parties must select a consequence for that particular Merger Event or Tender Offer (*see* Sections 12.2 and 12.3 below).

The first type is Share-for-Share, in which consideration in respect of the Merger Event or Tender Offer consists solely of the New Shares of the acquiring party or some third party (Section 12.1(f))(see also suggested language in Section 12.5 below). A Reverse Merger is deemed always to be a Share-for-Share Merger Event. “New Shares” is defined in Section 12.1(i) as ordinary or common shares that are or, as of the Merger Date or Tender Offer Date, are promptly scheduled to be publicly quoted, traded or listed on an exchange or quotation system located in the same country as the Exchange (or any country within the European Union if the Exchange is located in a European Union member-state) and the shares are not subject to any currency exchange controls, trading restrictions or limitations.

The definition of New Shares has been amended from that set forth in Section 9.3(a)(iv) of the 1996 Definitions, where New Shares was defined as “shares”. Section 12.1(i) provides that “New Shares” must be ordinary or common shares that are (i) publicly quoted, traded or listed on an exchange in the same country as the Exchange (or, if within the European Community, in any other member state of the European Union) and (ii) not subject to any currency exchange controls or trading restrictions. This amendment is significant because under the 1996 Definitions, the share consideration could be any type of shares without the requirement that those shares be listed in a particular country (or even listed at all) and generally not subject to trading or regulatory restrictions. Under the 1996 Definitions, there was also no requirement that the Shares offered as consideration for the merger be ordinary or common shares. The modification permits parties to express their intention that the Transaction be based on listed or quoted common or ordinary shares (not preferred) in a particular jurisdiction. For example, if the parties enter into a Transaction on the Shares of an Issuer listed in the United States and as a result of a Merger Event the Shares are relisted in Mexico, then there may be currency and withholding tax issues. Shares offered in consideration for a merger or a tender offer that do not meet the foregoing requirements would be treated as Other Consideration and the consequence specified for a Share-for-Other Merger Event or Tender Offer would therefore apply.

In some circumstances parties may wish to utilize a more restrictive definition of “New Shares” by providing that only certain exchanges located within the same country as the Exchange are acceptable (for example, NASDAQ’s National Market System and not NASDAQ’s OTC Bulletin Board). On the other hand, parties may wish to utilize a broader definition of “New Shares” in order to pick up situations where there are no trading restrictions, so that the New Shares would be publicly listed common or ordinary shares, but there would be no limit on the location of the Exchange on which such Shares are traded.

In the first case, the following suggested language may be considered by parties who agree to restrict the definition of New Shares:

“In the definition of “New Shares” in Section 12.1(i) of the 2002 Definitions the text in (i) shall be deleted in its entirety and replace with “(i) publicly quoted, traded or listed on any of the New York Stock Exchange, the American Stock Exchange or the NASDAQ National

Market System (or their respective successors).”

In the later case, the following suggested language may be considered by parties who agree to expand the definition of New Shares:

“New Shares” means ordinary or common shares, whether of the entity or person (other than the Issuer) involved in the Merger Event or the making of the Tender Offer or a third party, that are, or that as of the Merger Date or Tender Offer Date are promptly scheduled to be, (i) publicly quoted, traded or listed on an exchange or quotation system and (ii) not subject to any currency exchange controls, trading restrictions or other trading limitations.”

Share-for-Other. The second type of Merger Event or Tender Offer is Share-for-Other, in which consideration in respect of the Merger Event or Tender Offer is Other Consideration (Section 12.1(g)). “Other Consideration” is defined in Section 12.1(j) as cash, assets and/or securities (other than New Shares).

Share-for-Combined The third type of Merger Event or Tender Offer is Share-for-Combined, in which consideration in respect of a Merger Event or Tender Offer is Combined Consideration (Section 12.1(h)). “Combined Consideration” is defined in Section 12.1(k) as a combination of New Shares and Other Consideration.

Announcement Date. Section 12.1(l) defines Announcement Date. The concept of an Announcement Date is important because it may be used in the calculation of payments if an Extraordinary Event such as a Merger Event occurs (*see*, for example, the Agreed Model under Cancellation and Payment below). Under Section 9.7(c)(iii) of the 1996 Definitions, an Announcement Date for a Merger Event (or Nationalization) was defined as the date of the first public announcement of a firm intention to merge (or nationalize).

Announcement Date is defined in relation to a particular Extraordinary Event. In the case of a Merger Event, the Announcement Date is the date of the first public announcement of a firm intention to engage in a transaction that leads to a Merger Event. In the case of a Tender Offer, the Announcement Date is the date of the first public announcement of a firm intention to purchase or obtain the requisite number of voting shares that leads to the Tender Offer. Announcement Date is also defined by reference to Index Disruption, Index Cancellation, Index Modification, Nationalization, Insolvency and Delisting. For each of the Extraordinary Events (except Index Disruption), if the announcement of such Extraordinary Event is made after the closing time for the regular trading session on the relevant Exchange (without consideration for after hours trading), the Announcement Date is the next following Scheduled Trading Day. This amendment was made to account for situations where a company will wait until the close or after the end of trading to make an announcement relating to an Extraordinary Event. It was important to ensure that market participants could obtain a value for their hedging transaction in such situations by looking to the next Scheduled Trading Day as the Announcement Date for pricing calculations related to the Extraordinary Event.

Implied Volatility. Section 12.1(m) introduces a new term in the 2002 Definitions. Implied Volatility is defined as the mid-market implied volatility of the relevant Shares, as determined by the Calculation Agent as set forth in the definition. This definition is an important element in the Agreed Model method of valuing a Transaction when Cancellation and Payment has been elected as the consequence of an Extraordinary Event for a Share Option Transaction (*see* Section 12.7(b) below).

Affected Shares. Section 12.1(n) defines Affected Shares as those Shares affected by a Merger Event or a Tender Offer. This definition is relevant for one of the consequences discussed below, Partial Cancellation and Payment (*see* Sections 12.2(f), 12.3(e) and 12.6(c)(iii) below).

Section 12.2. Consequences of Merger Events. One of the major objectives in developing the 2002 Definitions was to revise the Consequences of Merger Events provisions, formerly set forth in Article 9 of the 1996 Definitions.

In Section 9.3 of the 1996 Definitions, there were three consequences that parties could elect from in the related Confirmation to deal with any of the three types of Merger Events: (i) Alternative Obligation; (ii) Cancellation and Payment; or (iii) Options Exchange Adjustment. Section 12.2 of the 2002 Definitions expands this menu of consequences to seven options: (i) Alternative Obligation; (ii) Cancellation and Payment; (iii) Options Exchange Adjustment; (iv) Calculation Agent Adjustment; (v) Modified Calculation Agent Adjustment; (vi) Partial Cancellation and Payment; and (vii) Component Adjustment.

Alternative Obligation. Section 12.2(a) sets forth the first possible consequence, Alternative Obligation. Alternative Obligation was included as a consequence in Section 9.3(b)(i) of the 1996 Definitions and its essence remains largely unchanged in the 2002 Definitions.

If Alternative Obligation is selected as the consequence by the parties in the related Confirmation, the Transaction continues and whatever the consideration is will replace the original Shares and the issuer of such consideration will replace the old Issuer. For example, if the original Share is a share of Company A and Company A is acquired by Company B in a Share-for-Share-Merger Event, then the Transaction will continue with Company B as the Issuer and the shares of Company B as the Shares. In addition, the Calculation Agent will adjust any other relevant terms to the Transaction, except that no adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the Shares. If a Reverse Merger occurs (which will always be deemed to be a Share-for-Share Merger Event) and the parties have selected Alternative Obligation to apply to that event, then no change will be made to the Transaction. This reflects the fact that in a Reverse Merger the original Shares remain the outstanding shares after the merger and therefore there is no new consideration to substitute for the original Shares.

Cancellation and Payment. Section 12.2(b) sets forth the second possible consequence, Cancellation and Payment. Cancellation and Payment was included in Section 9.3(b)(ii) of the 1996 Definitions, but it has been significantly amended in the 2002 Definitions. If Cancellation and Payment is selected as the consequence in the parties' related Confirmation, the Transaction is cancelled as of the Merger Date (*see* Section 12.1(c) above, where Merger Date is defined as the closing date of a Merger Event) and the Seller must pay to the Buyer a payment calculated by the Calculation Agent according to one of three methods (*see* Section 12.7(b) below). Two of these methods, Agreed Model and Calculation Agent Determination, are sub-elections relating to Option Transactions. The other method, Cancellation Amount, only applies to Forward Transactions and Equity Swap Transactions. These variants will be discussed in Section 12.7 below.

Options Exchange Adjustment. Section 12.2(c) sets forth the third possible consequence, Options Exchange Adjustment. Options Exchange Adjustment remains generally unchanged from Section 9.3(b)(iii) of the 1996 Definitions. Under Options Exchange Adjustment, the parties must select one or more Options Exchanges on which options on the relevant Shares trade. If the Options Exchange makes an adjustment to the settlement terms of options on the relevant Shares traded on the

Options Exchange, then the Calculation Agent must make any necessary corresponding adjustments to the Transaction. If options on the Shares are not traded on an Options Exchange, but there is some event that occurs that would have caused an adjustment pursuant to the rules and precedents of the Options Exchange, the Calculation Agent must make any corresponding adjustments.

Calculation Agent Adjustment. Section 12.2(d) sets out the fourth possible consequence, Calculation Agent Adjustment. Calculation Agent Adjustment is a new consequence under the 2002 Definitions and under this approach, instead of relying on an Options Exchange to make the determination of whether an event merits an adjustment or what that adjustment will be, the Calculation Agent makes the determination. Similar to the provisions of Section 11.2(c), the adjustments may, but need not, be determined by reference to the adjustments made by the Options Exchange. However, adjustments may not be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or to the Transaction. If the Calculation Agent determines that no adjustment it could make would produce a commercially reasonable result, it will notify the parties that the relevant consequence will be Cancellation and Payment and the Transaction will terminate. If the Transaction is an Option Transaction, then Calculation Agent Determination will apply, as discussed in Section 12.7 below.

Modified Calculation Agent Adjustment. Section 12.2(e) sets out the fifth possible consequence, Modified Calculation Agent Adjustment. Modified Calculation Agent Adjustment is a new consequence under the 2002 Definitions. Under this approach, the Calculation Agent adjusts the terms of the Transaction to account for the economic effect of the Merger Event. Unlike Calculation Agent Adjustment, Modified Calculation Agent Adjustment permits the Calculation Agent to include adjustments to account for changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or to the Transaction. Such adjustments could be made, for example, to account for the difference between the volatility of (i) the original Shares prior to the Announcement Date and (ii) the volatility of the New Shares (or the original shares in the case of a Reverse Merger) following the closing date of the Merger Event. Similar to Calculation Agent Adjustment, under Modified Calculation Agent Adjustment, if the Calculation Agent determines that no adjustment it could make would produce a commercially reasonable result, it will notify the parties that the relevant consequence will be Cancellation and Payment and the Transaction will terminate. If the Transaction is an Option Transaction, Calculation Agent Determination will apply, as discussed in Section 12.7 below.

Parties that would like to provide for adjustments for a Merger Event that is announced prior to the Expiration Date or Settlement Date but will close after the Expiration Date or Settlement Date, as applicable, may wish to consider the following language:

“Additional Extraordinary Adjustment: If a Merger Date is scheduled to be after the Expiration Date, Valuation Date or Scheduled Trading Day that is one Settlement Cycle prior to the Settlement Date, as applicable, the Calculation Agent will determine the economic effect on the theoretical value of the Transaction of the announcement of a potential Merger Event (including, without limitation, any change in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or the Transaction) from the Announcement Date to the Expiration Date, Valuation Date or Scheduled Trading Day that is one Settlement Cycle prior to the Settlement Date, as applicable. If such economic effect is material, the Calculation Agent will adjust any one or more of the following terms as the Calculation Agent determines appropriate to account for such economic effect and determine the effective date(s) of the adjustment(s):

- (i) in respect of a [Share Option Transaction][Share Basket Transaction], the Strike Price, the Number of Options, the Option Entitlement, the Knock-in Price, the Knock-out Price, and the relevant Number of Shares.
- (ii) in respect of a [Share Forward Transaction][Share Basket Forward Transaction], the Forward Price, the Forward Floor Price, the Forward Cap Price, the Knock-in Price, the Knock-out Price, and the relevant Number of Shares.
- (iii) in respect of a [Share Swap Transaction][Share Basket Swap Transaction], the Initial Price, the Equity Notional Amount, the Knock-in Price, the Knock-out Price, and the relevant Number of Shares.
- (iv) in respect of all Transactions, any other variable relevant to the exercise, settlement, payment or other terms of the Transaction as the Calculation Agent determines appropriate to account for the economic effect of the value of the Transaction.”

Partial Cancellation and Payment. Section 12.2(f) sets out the sixth possible consequence, Partial Cancellation and Payment. Partial Cancellation and Payment is a new consequence under the 2002 Definitions. Partial Cancellation and Payment is intended to apply only to Share Basket Transactions and allows parties to cancel only the part of the Transaction that relates to Shares affected by the Merger Event. For example, if a Merger Event impacts only one Share out of a basket of Shares, by selecting Partial Cancellation and Payment, the parties cancel the one “Affected Share” and calculate a termination payment as provided in Section 12.7 below and the rest of the Share Basket Transaction continues unaffected.

Component Adjustment. Section 12.2(g) sets out the seventh possible consequence, Component Adjustment. Component Adjustment is a new consequence under the 2002 Definitions and only applies to Share-for-Combined Merger Events. Component Adjustment is intended to be a short-hand method of providing that the consequence of Share-for-Share Merger Events applies to the New Share consideration for the Merger Event and the consequence of Share-for-Other applies to Other Consideration offered in such Merger Event.

Section 12.3. Consequences of Tender Offers. Section 12.3 is new in the 2002 Definitions, as the 1996 Definitions did not address Tender Offers. Similar to the approach set forth in Section 12.2 for Merger Events, the parties must select the consequence for each of the three types of Tender Offers. However, under Section 12.3, there are six consequences available to select from, as compared to seven consequences available under Section 12.2. Alternative Obligation was not included in Section 12.3 because a Tender Offer, by definition, is for less than 100% of the outstanding Shares and therefore, at the completion of the Tender Offer, at least some, and perhaps a large percentage, of the original Shares will still be outstanding and should (in most circumstances) be available for valuation and settlement of the Transaction.

Cancellation and Payment. Section 12.3(a) sets forth the first possible consequence, Cancellation and Payment. For Option Transactions where Cancellation and Payment is selected as the consequence, the Option is cancelled as of the Tender Offer Date (*see* Section 12.1(e) above) and the Seller will pay to the Buyer a certain payment amount (*see* Section 12.7(b) below). For Forward Transactions and Equity Swap Transactions, the respective Transaction is cancelled as of the Tender

Offer Date and an amount is calculated for payment in accordance with Section 12.7(c), as discussed below.

Options Exchange Adjustment. Section 12.3(b) sets out the second possible consequence, Options Exchange Adjustment. Similar to Section 12.2(c) above, Section 12.3(b) provides that the parties must select one or more Options Exchanges on which options on the relevant Shares trade. If the Options Exchange makes an adjustment to the settlement terms of options on the relevant Shares traded on the Options Exchange, then the Calculation Agent must make any necessary corresponding adjustments to the Transaction. If options on the Shares are not traded on an Options Exchange, but there is some event that occurs that would have caused an adjustment pursuant to the rules and precedents of the Options Exchange, the Calculation Agent must make any corresponding adjustments.

Calculation Agent Adjustment. Section 12.3(c) sets out the third possible consequence, Calculation Agent Adjustment. The Calculation Agent will make adjustments to the terms of the Transaction. Similar to the provisions of Section 11.2(c), the adjustments may, but need not, be determined by reference to the adjustments made by the Options Exchange. However, adjustments may not be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or to the Transaction. If the Calculation Agent determines that no adjustment it could make would produce a commercially reasonable result, it will notify the parties that the consequence is Cancellation and Payment and the Transaction will terminate. For Option Transactions, the Calculation Agent will determine the payment amount based on Calculation Agent Determination, as discussed in Section 12.7 below. For Forward Transactions or Equity Swap Transactions, the payment amount will be the Cancellation Amount.

Modified Calculation Agent Adjustment. Section 12.3(d) sets out the fourth possible consequence, Modified Calculation Agent Adjustment. Modified Calculation Agent Adjustment is similar to Calculation Agent Adjustment, but under this approach, adjustments (including, without limitation, those to the spread) to account for changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or to the Transaction may be made. As with Calculation Agent Adjustment, if the Calculation Agent determines that no adjustment it could make would produce a commercially reasonable result, it will notify the parties that the consequence is Cancellation and Payment and the Transaction will terminate. For Option Transactions, the Calculation Agent will determine the payment amount based on Calculation Agent Determination, as discussed in Section 12.7 below.

Partial Cancellation and Payment. Section 12.3(e) sets out the fifth possible consequence, Partial Cancellation and Payment. Partial Cancellation and Payment applies only to Share Basket Transactions. As with Section 12.2(f), Section 12.3(e) provides that only the portion of the Transaction represented by the Affected Shares is cancelled and the rest of the Share Basket Transaction continues unaffected.

Component Adjustment. Section 12.3(f) sets out the sixth possible consequence, Component Adjustment. Component Adjustment applies to Share-for-Combined Tender Offers. Component Adjustment is intended to be a short-hand method of providing that the consequence of Share-for-Share Tender Offers applies to the New Share consideration for the Tender Offer and the consequence of Share-for-Other applies to the remainder of the consideration offered in such Tender Offer.

As with Merger Events, parties may wish to provide for adjustments for a Tender Offer that is announced prior to the Expiration Date or Settlement Date but will close after the Expiration Date or Settlement Date, as applicable. The amendments that were suggested to provide for this adjustment with respect to Merger Events can be made to allow the same adjustment with respect to Tender Offers, with the words “Merger Event” changed to “Tender Offer” and “Merger Date” changed to “Tender Offer Date”.

Section 12.4. Settlement Following a Merger Event or Tender Offer. Section 12.4 addresses how settlement occurs once a Merger Event or a Tender Offer occurs. These provisions are in most respects similar to those included in Section 9.4 of the 1996 Definitions, with some conforming modifications. Section 12.4(a) states that if Other Consideration (*see* Section 12.1(j) above) is required to be valued in relation to a Cash-settled Transaction that has been adjusted following a Merger Event or a Tender Offer, such Other Consideration will be valued on each Valuation Date or Averaging Date by the Calculation Agent, without regard to any intervening Market Disruption Events that may occur.

Section 12.4(b) provides that in a Physically-settled Transaction where New Shares must be delivered following a Merger Event or a Tender Offer, the New Shares will be delivered in accordance with the settlement terms set forth in the related Confirmation. If a holder of the Shares has not yet received the New Shares on the relevant Settlement Date, the Settlement Date will be postponed until the first Clearance System Business Day falling on or after the first day on which a holder, having received the New Shares, would be able to deliver such New Shares to the other party.

Section 12.4(c) states that in a Physically-settled Transaction, if Other Consideration is required to be delivered following a Merger Event or a Tender Offer, the Other Consideration will be delivered in a commercially reasonable manner as soon as reasonably practicable after the later of the relevant Settlement Date and the first day on which a holder, having received the Other Consideration, would be able to deliver such Other Consideration to the other party.

Section 12.5. Composition of Combined Consideration. Section 12.5 addresses the composition of Combined Consideration (*see* Section 12.1(k) above) in respect of a Share-for-Combined Merger Event or Tender Offer. The parties must specify in the related Confirmation if “Composition of Combined Consideration” applies; otherwise, it does not apply. Section 12.5(a) states that when “Composition of Combined Consideration” applies, if the holder of Shares equal to the relevant Option Entitlement or Number of Shares could make the determination relating to the composition of the Combined Consideration and the holder could receive New Shares, then the Combined Consideration will be deemed to be the New Shares to the maximum value permitted. If the holder could make any other election relating to the Combined Consideration other than the New Shares, then the composition is determined by the deliverer or payee, if notice is provided to the deliverer or payor at least two Scheduled Trading Days before the last time such election could be made. If the deliverer or payee does not make such election on a timely basis, then the deliverer or payor will determine the composition of the Combined Consideration in its sole discretion.

Section 12.5(b) states that when “Composition of Combined Consideration” is not applicable, if the holder of Shares equal to the relevant Option Entitlement or Number of Shares could make the determination relating to the composition of the Combined Consideration and the holder could receive New Shares, then the Combined Consideration will be deemed to be the New Shares to the maximum value permitted. If the holder could make any other election relating to the Combined

Consideration other than the New Shares, then the Calculation Agent will determine the composition of the Combined Consideration in its sole discretion.

Parties that decide that the Calculation Agent should determine the composition of the merger or tender offer consideration regardless of whether or not it may consist of New Shares may wish to consider adding the following language to their Confirmations:

“provided that, notwithstanding Section[s] 12.5(b) [and 12.1(f)] of the 2002 Definitions, to the extent that the composition of the consideration for the relevant Shares pursuant to a Tender Offer or Merger Event could be determined by a holder of the Shares, the Calculation Agent will, in its sole discretion, determine such composition.”

Parties may also wish to consider whether a comparable change should be made to Section 12.1(f), which provides that a Merger Event or Tender Offer will be Share-for-Share (and thus outside the scope of Section 12.5) if a holder of Shares, at their option, could receive consideration consisting solely of New Shares.

Section 12.6. Nationalization, Insolvency and Delisting. Section 9.6 of the 1996 Definitions addressed Nationalization and Insolvency as events that could result in either Negotiated Close-out or Cancellation and Payment. This provision has been expanded in Section 12.6 of the 2002 Definitions to include Delisting as a new Extraordinary Event and to expand the consequences available to deal with such events.

Nationalization. Section 12.6(a)(i) defines Nationalization, but the definition remains generally the same as that set forth in Section 9.6(a)(i) of the 1996 Definitions. Nationalization occurs if all the Shares or all or substantially all the assets of an Issuer are nationalized, expropriated or are otherwise transferred to any governmental agency, authority, entity or instrumentality thereof.

Insolvency. Section 12.6(a)(ii) defines Insolvency, and this definition also remains generally the same as that set forth in Section 9.6(a)(ii) of the 1996 Definitions. This provision should be distinguished from an Insolvency Filing discussed in Section 12.9(a)(iv) below. Insolvency is narrowly defined as an event that results in the Shares of an Issuer being transferred to a trustee, liquidator or other similar official, or the holders of the Issuer’s Shares being legally prohibited from transferring them by reason of a voluntary or involuntary liquidation, bankruptcy, insolvency, dissolution or winding-up.

Delisting. Section 12.6(a)(iii) defines Delisting, a new definition in the 2002 Definitions. When the 1996 Definitions were published, delistings were an infrequent occurrence, but recently, delistings have become more common. Section 12.6(a)(iii) defines Delisting as an event where an Exchange announces that the Shares cease or will cease to be listed, traded or publicly quoted on the Exchange (other than by reason of a Merger Event or a Tender Offer) and those Shares are not immediately re-listed, re-traded or re-quoted on any exchange or quotation system located in the same country as the Exchange, or if the Exchange is within the European Union, on any exchange or quotation system in any member state of the European Union. During preparation of the 2002 Definitions, members agreed that when a company moves from one Exchange to another Exchange meeting the geographic parameters (such as from NASDAQ to the New York Stock Exchange), this event should not trigger a Delisting (*see* Section 1.25 above).

For purposes of this Additional Disruption Event, where parties wish to differentiate between listing on NASDAQ's National Market System and a listing on NASDAQ's OTC Bulletin Board, parties may wish to consider adding the following language:

“In addition to the provisions of Section 12.6(a)(iii) of the 2002 Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market System (or their respective successors).”

Alternatively, or for other jurisdictions, parties may also wish to consider replacing “an” with “a comparable” in the fourth line of Section 12.6(a)(iii) so that the relevant text reads “...a comparable exchange or quotation system...”.

Notification. Section 12.6(b) states that either party must promptly notify the other party upon becoming aware of the occurrence of a Nationalization, Insolvency or Delisting.

Consequences of Nationalization, Insolvency and Delisting. Section 12.6(c) sets forth the three possible consequences if a Nationalization, Insolvency or Delisting occurs.

Negotiated Close-out. Section 12.6(c)(i) addresses the first possible consequence, Negotiated Close-out. A Negotiated Close-out means that the parties may terminate the Transaction on mutually acceptable terms, but the parties are not obliged to do so. If the parties do not agree to terminate the Transaction, then the Transaction continues on the terms and subject to the conditions then in effect. If the Transaction is a Physically-settled Transaction, then it can be converted to a Cash-settled Transaction at the election of either party.

Cancellation and Payment. Section 12.6(c)(ii) addresses the second possible consequence, Cancellation and Payment. Under this approach, the Transaction is cancelled as of the Announcement Date (*see* Section 12.1(l) above). Once the Transaction is cancelled, an amount is calculated as described in Section 12.7(b) or (c) below. It is unlikely that the parties would use the Agreed Model as the Transaction is cancelled on the Announcement Date and therefore in this situation, the Announcement Date is effectively the same as the Closing Date.

Partial Cancellation and Payment. Partial Cancellation and Payment is a new consequence, described in Section 12.6(c)(iii). Partial Cancellation and Payment applies only in the context of Share Basket Transactions. Under this approach, the Affected Shares are cancelled and the remainder of the Share Basket Transaction continues.

It should also be noted that Options Exchange Adjustment is not an option in the case of a Nationalization, Insolvency or Delisting unless the parties add it to the related Confirmation. Parties may consider the following language if they decide to apply Options Exchange Adjustment in this situation:

“Options Exchange Adjustment”: For the purposes of Section 12.6 of the 2002 Definitions. Options Exchange Adjustment will be deemed to mean that following each adjustment to the settlement terms of options on any relevant Shares traded on any Options Exchange, the Calculation Agent will make one or more adjustments as provided in Section 11.2(b) (without regard to the words “diluting or concentrative” in the second sentence).

Section 12.7. Payment upon Certain Extraordinary Events. Section 12.7 sets forth how payment will be calculated upon certain Extraordinary Events occurring in relation to which Cancellation and Payment or Partial Cancellation and Payment have been selected as the relevant consequence. Section 12.7(a) states that if Cancellation and Payment or Partial Cancellation and Payment are applicable in respect of an Extraordinary Event, then the amount payable by one party to the other party must be made within three Currency Business Days following the date of notice given by the Calculation Agent or the Determining Party.

Section 12.7(b) provides that for Option Transactions, the amount to be paid by the Seller to the Buyer will be agreed no later than five Exchange Business Days following the Merger Date, the Tender Offer Date, the cancellation date in respect of an Index Adjustment Event or a Nationalization, Insolvency or Delisting (collectively referred to as the “Closing Date”).

If the parties cannot agree on the amount to be paid by the Seller to the Buyer within five Exchange Business Days following the Closing Date, the parties are guided by whether “Agreed Model” or “Calculation Agent Determination” has been elected in the related Confirmation. Agreed Model and Calculation Agent Determination are the two variants of Cancellation and Payment that apply to Option Transactions. A third method called “Cancellation Amount” applies to Forward Transactions and Equity Swap Transactions (*see* Sections 12.7(c) and 12.8 below).

Agreed Model. If the parties have specified “Agreed Model” in the related Confirmation, then the amount payable by the Seller to the Buyer is determined by the Calculation Agent as the sum of the “Unadjusted Value” and the “Adjustment Value”. Generally, the objective of the Agreed Model methodology is that the Calculation Agent will determine the value of the Option Transaction on the Closing Date and then make an adjustment based on the change in value of that Option Transaction on the Announcement Date of the Extraordinary Event as a result of a change in the level of implied volatility of the underlying Shares. An Extraordinary Event can impact the volatility of the Shares of the target company. The 2002 Definitions account for this shift in values by allowing parties to adjust for volatilities that occur pre- and post-Extraordinary Event and to eliminate any windfall gains or losses that arise from them.

Specifically, there are two component calculations to be made in the Agreed Model. To calculate the Unadjusted Value, the Calculation Agent uses a set of five variables based on the inputs from most standard option pricing models and set forth as the Unadjusted Values in Section 12.7(b)(i)(A) as the following:

- A volatility equal to the average of the Implied Volatilities of the relevant Shares on each of the 15 Exchange Business Days ending on, and including, the Closing Date;
- Dividends equal to historic dividends, or in the event there is a published change to a dividend policy on the relevant Shares prior to the Closing Date, the expected dividends for the period remaining from the Closing Date until the Expiration Date. In either case, Extraordinary Dividends are excluded;
- A value ascribed to the relevant Shares that is determined by the Calculation Agent and, if applicable, equal to the value of the consideration (if any) received by the holders of such Shares at the time of the Extraordinary Event;
- A combined interest rate and stock loan rate as specified in the related Confirmation (for example, LIBOR flat) for the period from, and including, the Closing Date to, but excluding, the Expiration Date; and

- A term of the Option Transaction from the Closing Date to the Expiration Date.

After the Calculation Agent has determined the Unadjusted Value, the next component in the calculation of Agreed Model is to calculate the Adjustment Value, as described in Section 12.7(b)(i)(B). Unlike the approach of Unadjusted Value, which is calculated by reference to various inputs at the Closing Date or from the Closing Date to the Expiration Date, for the Adjustment Value, the Calculation Agent is examining the impact of the Extraordinary Event on the value of the Option Transaction prior to the Announcement Date and after the Announcement Date, or in other words, determining how much the value of the Option Transaction changed as a result of the announcement of the Extraordinary Event.

In determining the Adjustment Value, the Calculation Agent must take the difference between two amounts. The first amount requires the Calculation Agent to make a determination based on the following set of inputs:

- A volatility equal to the average of the Implied Volatilities of the relevant Shares on each of the 15 Exchange Business Days ending on, but excluding, the Announcement Date;
- Dividends equal to historic dividends, or in the event there is a published change to a dividend policy on the relevant Shares prior to the Announcement Date, the expected dividends for the period remaining from the Announcement Date until the Expiration Date. In either case, Extraordinary Dividends are excluded;
- A value ascribed to the relevant Shares equal to the Settlement Price as of the Valuation Time;
- A combined interest rate and stock loan rate as specified in the related Confirmation for the period from, and including, the Announcement Date to, but excluding, the Expiration Date; and
- A term of the Option Transaction from the Announcement Date to the Expiration Date.

The second amount the Calculation Agent must determine is the value of the Option Transaction based on the same factors listed in Section 12.7(b)(i)(B) above, except that with respect to Implied Volatility, the timeframe for assessment of the relevant Shares is each of the 15 Exchange Business Days commencing on, and including, the Announcement Date.

The Adjustment Value is the difference between the amounts calculated under Sections 12.7(b)(i)(B)(1) and 12.7(b)(i)(B)(2). The Calculation Agent takes the sum of the Adjustment Value and the Unadjusted Value to determine the amount payable by the Seller to the Buyer under the Agreed Model upon cancellation of the Option Transaction.

An example of the Agreed Model is as follows:

Upon the closing of the Merger Event, the Calculation Agent determines the value of the option based on a pre-agreed set of inputs for dividends, stock price, term, interest rate and stock loan rate plus its determination of the implied volatility at specified times. For this example, we will assume that this calculation results in the Seller having to pay the Buyer \$1,000,000.

The Calculation Agent then determines the change in the value of the option reflecting the change in the implied volatility of the underlying shares around the time of the announcement

of the Merger Event. It does this by ascertaining the difference between two calculations using another pre-agreed set of inputs for dividends, stock price, term, interest rate and stock loan rate, but with two different volatility numbers. The first volatility number is the Calculation Agent's determination of the implied volatility at designated times prior to the announcement date of the Merger Event and the second is based on similar determinations at designated times on and following such announcement date.

For this example, assume that the above calculation results in the value of the option being \$100,000 lower after the announcement because the volatility of the ultimate acquirer is less than the target. This \$100,000 is added to the \$1,000,000, resulting in the Seller having to pay the Buyer (who, in this example, is "long" volatility) \$1,100,000 upon the cancellation of the option.

Calculation Agent Determination. The second variant of Cancellation and Payment is known as "Calculation Agent Determination" as set forth in Section 12.7(b)(ii). The Calculation Agent Determination approach gives the Calculation Agent flexibility to determine the amount payable upon the cancellation of the Option Transaction. The Calculation Agent may base its determination on the inputs of the Agreed Model but it is not required to do so. Calculation Agent Determination is the default method for valuing Option Transactions when an Index Adjustment Event has occurred and when Calculation Agent Adjustment or Modified Calculation Agent Adjustment has been elected as the consequence of a Merger Event or Tender Offer and the Calculation Agent determines that no adjustment it could make would produce a commercially reasonable result. Again, it should be noted that both Agreed Model and Calculation Agent Determination apply only to Option Transactions and not to Forward Transactions and Equity Swap Transactions.

Cancellation Amount. For Forward Transactions and Equity Swap Transactions where Cancellation and Payment is specified, the relevant Transaction is cancelled and the Determining Party will calculate the Cancellation Amount under Section 12.7(c). If there is only one Determining Party (defined in Section 12.8(f)) specified in the related Confirmation, that party will determine the Cancellation Amount. If there are two Determining Parties, each party will determine a Cancellation Amount and one-half of the total of the Cancellation Amounts is payable.

Section 12.8. Cancellation Amount. Cancellation Amount is a new term in the 2002 Definitions. As stated above in Section 12.7(c), Cancellation Amount specifically applies to Forward Transactions and Equity Swap Transactions. The Cancellation Amount, defined in Section 12.8(a), is based on the formulation for Close-out Amount in the 2002 ISDA Master Agreement. A full discussion of Close-out Amount may be found in the User's Guide to the 2002 ISDA Master Agreement. In calculating a Cancellation Amount, a Determining Party is required to act in good faith and to use commercially reasonable procedures. It should be noted that quotations are not necessarily required, as depending on the Transaction in question, the cost of liquidating hedges may be a more appropriate basis for determining a Cancellation Amount than soliciting quotations.

Parties should note that, the Determining Party is the party that will be calculating its own cost of replacing or providing the economic equivalent of a terminated Transaction. The Calculation Agent may be a party to the Transaction, but when performing its duties as Calculation Agent it is acting as a neutral party. The Calculation Agent as such will not have a replacement cost or economic equivalent and therefore should not be designated as the Determining Party.

Working Group members noted that while Share Forward Transactions to which Variable Obligation is applicable have embedded options contained in the Transaction, the Agreed Model is not available as an election if Cancellation and Payment is specified as the consequence of an

Extraordinary Event. The Cancellation Amount provision may be broad enough in its application to these Transactions to contemplate the inclusion of amounts in respect of changes in volatility, expected dividends, stock loan rate and/or liquidity in certain situations (for example, where the parties have evidenced an intent to permit such party to be compensated for changes to these levels on account of corporate events), and where it would be commercially reasonable on the part of the Determining Party to consider these factors in the particular situation.

Section 12.9. Additional Disruption Events. The 2002 Definitions introduce a new category of seven elective disruption events entitled “Additional Disruption Events”. The Additional Disruption Events were included at the request of members who found that in the intervening six years since publication of the 1996 Definitions, market participants had begun to develop their own firm-specific description of additional disruption events that apply in the case of disruptions to the parties’ hedging arrangements, a change in law, an insolvency filing or a failure to deliver Shares as a result of an illiquid market. Members requested that the most common additional disruption events be standardized in the 2002 Definitions.

Unlike the consequences related to Extraordinary Events, the parties can elect as many Additional Disruption Events as are agreed to. The Additional Disruption Events are elective, so none of them apply automatically. There may be overlap between Change in Law and Hedging Disruption. Given that Change in Law contains no cure period and Hedging Disruption contains a two Scheduled Trading Days’ cure period, parties should consider specifying a priority between the two Additional Disruption Events in the related Confirmation. If parties select more than one Additional Disruption Event to apply to their Transaction, they should consider whether certain events would constitute more than one Additional Disruption Event, and whether the consequences of each Additional Disruption Event are different (*e.g.*, Increased Cost of Hedging and Increased Cost of Stock Borrow). In such cases parties should add a provision to the Confirmation that states which provision should be followed if there is a conflict. The only conflict addressed by the 2002 Definitions is between Hedging Disruption and Loss of Stock Borrow. If both events are specified as applicable in a Confirmation and an event occurs that could qualify under either elective, then such event will be treated as a Loss of Stock Borrow, pursuant to Section 12.9(b)(vii). Lastly, any of the Additional Disruption Events can apply to any type of Transaction, except that Failure to Deliver (discussed below) applies only to Physically-settled Transactions.

Change in Law. Section 12.9(a)(ii) sets forth the first possible Additional Disruption Event, Change in Law. Change in Law is intended to cover circumstances where it becomes illegal to hold, acquire or dispose of Shares relating to the Transaction as a result of a change in an applicable law or regulation on or after the Trade Date. Change in Law also covers situations where a party will incur a materially increased cost in performing its obligations under the Transaction as a result of a change in an applicable law or regulation. Change in Law may apply to the Hedging Party and the Non-Hedging Party. This Additional Disruption Event does not relate to the material increase in the cost of hedging, but only relates to the increased cost in performing the obligations under the Transaction.

If the parties would like Change in Law to apply to Index Transactions (*e.g.*, because Hedging Disruption is not applicable), they should consider amending “Shares” in Section 12.9(a)(ii) to “Hedge Positions” (as defined in Section 13.2(b)) since the hedge will probably not be in the underlying Shares but rather in futures or options contracts on the Index.

Section 12.9(b)(i) sets forth the consequence of a Change in Law. If a Change in Law occurs, either party may elect to terminate the Transaction upon at least two Scheduled Trading Days’ notice

to the other party. Upon the provision of such notice, the Transaction will terminate and the Determining Party will determine the Cancellation Amount payable by one party to the other party.

Failure to Deliver. Section 12.9(a)(iii) describes the second possible Additional Disruption Event. Failure to Deliver was included in the 1996 Definitions (in Section 6.9). Failure to Deliver was frequently elected under the 1996 Definitions and has been carried over to the 2002 Definitions, albeit in an amended form. Failure to Deliver is defined in Section 12.9(a)(iii) of the 2002 Definitions as a party's failure to deliver, when due, the relevant Shares under the Transaction due to the occurrence of an illiquid market for those Shares.

Section 12.9(b)(ii) sets forth the consequence of a Failure to Deliver. If a Failure to Deliver occurs, the party required to deliver the relevant Shares (the "Delivering Party") must notify the other party (the "Receiving Party") within one Clearance System Business Day of the Exercise Date for an Option Transaction or, in the case of a Forward Transaction or an Equity Swap Transaction, within one Settlement Cycle prior to the Settlement Date. The Delivering Party is required to deliver the number of Shares that it can to the Receiving Party and will receive a pro rata Settlement Price. For European Options or Forward Transactions, the Receiving Party may terminate the Transaction by giving notice to the Delivering Party and calculating the Cancellation Amount. For American Options or Bermuda Options, the Receiving Party may elect to terminate the portion of the Transaction that relates to the exercised Options, the unexercised Options or both by giving notice to the Delivering Party. The Receiving Party shall then determine the Cancellation Amount. It should be noted that a Failure to Deliver, if elected, will not constitute an Event of Default under the ISDA Master Agreement pursuant to Section 12.9(b)(ii).

Insolvency Filing. Section 12.9(a)(iv) defines the third possible Additional Disruption Event, Insolvency Filing. Insolvency Filing is defined as an insolvency or bankruptcy proceeding instituted by the Issuer or a regulator, supervisor or similar official with primary insolvency or regulatory jurisdiction over the Issuer. An Insolvency Filing should be distinguished from the much narrower definition of Insolvency as set forth in Section 12.6(a)(ii), discussed above. Unlike the comparable provision in the ISDA Master Agreement, an Insolvency Filing specified as an Additional Disruption Event has no grace period associated with it and is not triggered by an involuntary filing by creditors (*i.e.*, persons other than the Issuer or a regulatory, supervisor or other similar official) that has not been dismissed within 15 days.

Section 12.9(b)(i) sets forth the consequence of an Insolvency Filing. As with Change in Law, if an Insolvency Filing occurs, either party may elect to terminate the Transaction upon at least two Scheduled Trading Days' notice to the other party. Upon the provision of such notice, the Transaction will terminate and the Determining Party will determine the Cancellation Amount payable by one party to the other party.

Hedging Disruption. Section 12.9(a)(v) defines the fourth possible Additional Disruption Event, Hedging Disruption. Hedging Disruption is defined as the Hedging Party being unable to hedge the equity price risk in respect of the Transaction or being unable to recover or realize the proceeds from such hedges after using commercially reasonable efforts to do so. "Hedging Party" is defined in Section 12.9(a)(ix) as the party specified as such in the related Confirmation. If no Hedging Party is specified, the Hedging Party will be either party to the Transaction.

Section 12.9(b)(iii) specifies the consequences of a Hedging Disruption. If a Hedging Disruption occurs, the Hedging Party may elect, while the Hedging Disruption is continuing, to

terminate the Transaction upon at least two Scheduled Trading Days' notice. The Determining Party will then determine the Cancellation Amount.

Increased Cost of Hedging. Section 12.9(a)(vi) defines the fifth possible Additional Disruption Event, Increased Cost of Hedging. Increased Cost of Hedging is defined as the Hedging Party incurring a materially increased amount of tax, duty, expense or other fee (other than brokerage commissions) in order to acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transactions or assets it deems necessary to hedge the equity price risk of entering into or performing obligations under the Transaction or being unable to realize, recover or remit the proceeds of any such transaction or asset. The "materially increased amount" is not a specified amount but does not include costs incurred solely due to the deterioration of the creditworthiness of the Hedging Party.

Section 12.9(b)(vi) specifies the consequences of Increased Cost of Hedging. If Increased Cost of Hedging occurs, the Hedging Party must notify the Non-Hedging Party. The Non-Hedging Party has two Scheduled Trading Days either (i) to agree to the Price Adjustment to the Transaction proposed by the Hedging Party or to pay the increased amount determined by the Calculation Agent to the Hedging Party; or (ii) to terminate the Transaction. If the Non-Hedging Party does not make a timely election, then the Hedging Party may give immediate notice to terminate the Transaction.

"Price Adjustment" is a new term in the 2002 Definitions defined in Section 12.9(a)(xv). Price Adjustment is an adjustment to various terms of the Transaction listed as Strike Price, Initial Price, Forward Price, Forward Floor Price, Forward Cap Price, Knock-in Price, Knock-out Price, spread or other variable.

Loss of Stock Borrow. Section 12.9(a)(vii) defines the sixth possible Additional Disruption Event, Loss of Stock Borrow. Loss of Stock Borrow is defined as the Hedging Party being unable to borrow or maintain a borrowing of Shares, after using commercially reasonable efforts, to hedge a Transaction at a rate equal to or less than the Maximum Stock Loan Rate. "Maximum Stock Loan Rate" is defined in Section 12.9(a)(xiii) as the stock loan rate specified in the related Confirmation. In essence, Maximum Stock Loan Rate is what it costs a party to borrow Shares (commonly the stock lender's spread). Loss of Stock Borrow is intended to relate to short hedges, where a party will borrow Shares to short an equity, and may be used on multiple occasions during a transaction. In addition, the provision relates to a Hedging Party's ability to borrow Shares with respect to a particular Transaction. Therefore, a Hedging Party's ability to borrow Shares with respect to other unrelated transactions will not affect its ability to exercise its rights under Section 12.9(a)(vii) in connection with a particular Transaction.

It should be noted that Loss of Stock Borrow was intended to address the costs of borrowing but not the rate of return. The rate of return concept is based on the interest paid by a stock lender on cash collateral posted in connection with a borrowing of the Shares, net of any costs and fees. If a party would like to include rate of return in Loss of Stock Borrow, parties may wish to consider the following modification:

"Section 12.9(a)(vii) and Section 12.9(b)(iv) of the 2002 Definitions are amended by deleting the words "at a rate equal to or less than the Maximum Stock Loan Rate" and replacing the deleted phrase with "at a rate of return equal to or greater than [zero]".

Section 12.9(b)(iv) specifies the consequences of Loss of Stock Borrow. Upon at least two

Scheduled Trading Days' notification of a Loss of Stock Borrow, the Non-Hedging Party may lend the Hedging Party Shares or refer the Hedging Party to a Lending Party that will lend the Hedging Party Shares, in either case at a rate equal to or less than the Maximum Stock Loan Rate. "Lending Party" is defined in Section 12.9(a)(xi) as a third party that is considered to be a satisfactory counterparty. Under Section 12.9(b)(viii), the Shares loaned must be freely tradable and in book-entry form and documented in a form acceptable to the Hedging Party. If the Share loan does not occur within the required timeframe, then the Hedging Party may give notice that it will terminate the Transaction and the Determining Party will determine the Cancellation Amount.

Increased Cost of Stock Borrow. Section 12.9(a)(viii) defines the seventh possible Additional Disruption Event, Increased Cost of Stock Borrow. Increased Cost of Stock Borrow is defined as a situation where the Hedging Party incurs a cost to borrow shares (commonly the stock lender's spread) that is greater than the Initial Stock Loan Rate. "Initial Stock Loan Rate" is defined in Section 12.9(a)(xiv) as the stock loan rate specified in the related Confirmation. As with Loss of Stock Borrow, the provision relates to a Hedging Party's cost to borrow Shares with respect to a particular Transaction. Therefore, a Hedging Party's ability to borrow Shares with respect to other unrelated transactions will not affect its ability to exercise its rights under Section 12.9(a)(viii) in connection with a particular Transaction.

It is expected that the Initial Stock Loan Rate would typically be lower than the Maximum Stock Loan Rate and it is whatever the parties specify in their Confirmation. Therefore, Increased Cost of Stock Borrow should provide the Hedging Party with incrementally more protection than Loss of Stock Borrow (discussed above) because the Hedging Party is able to pass through the incremental cost increases in the cost of borrowing. Parties should evaluate the potential credit risk in connection with this provision and may wish to add such amounts to the definition of "Exposure" under any relevant credit support document. Increased Cost of Stock Borrow can be used on multiple occasions. For example, if the cost of borrowing rises from ten to 20 basis points, the Hedging Party can make an adjustment. If, subsequently, the cost of borrowing rises from 20 to 30 basis points, the Hedging Party may make a second adjustment.

As described above, if parties would prefer to refer to the rate of return rather than the rate to borrow then they may wish to consider adding the following:

"Section 12.9(a)(viii) of the 2002 Definitions is amended by deleting the words "incur a rate to borrow", replacing them with "receive a rate of return in connection with the borrowing of" and deleting the words "greater than the Initial Stock Loan Rate" and replacing them with "less than the Initial Stock Loan Rate". In addition Section 12.9(b)(v) of the 2002 Definitions is amended by deleting the words "at a rate equal to or less than the Initial Stock Loan Rate", and replacing them with "a rate of return that is equal to or greater than the Initial Stock Loan Rate"

Section 12.9(b)(v) specifies the consequences of Increased Cost of Stock Borrow. Upon notification, the Non-Hedging Party has two Scheduled Trading Days to either: (i) agree to the Price Adjustment to the Transaction proposed by the Hedging Party to reflect the higher cost; (ii) pay the increased cost to the Hedging Party; or (iii) terminate the Transaction. If the Non-Hedging Party makes no election within the required timeframe, then the Hedging Party may give immediate notice to terminate the Transaction. The Non-Hedging Party also may, within the two Scheduled Trading Day period, lend the Hedging Party Shares or refer the Hedging Party to a Lending Party that will lend the Hedging Party Shares, in either case at a rate equal to or less than the Initial Stock Loan Rate.

In addition to risks arising in connection with hedging activities, some members have been concerned about situations where settling a Transaction in a currency other than the currency of the Shares could lead to convertibility problems. In cases where convertibility is a concern, parties may wish to consider adding a Currency Disruption Event and could start with the following language and customize it for their particular Transaction:

“If the Obligor notifies the Obligee that a Currency Disruption Event has occurred prior to or on the Settlement Date, any payment to be made in the Settlement Currency in respect of such Settlement Date will be postponed until the Currency Business Day that is one Settlement Cycle following the first succeeding Currency Business Day on which no Currency Disruption Event exists; provided, however, that, if a Currency Disruption Event continues to exist for nine succeeding Currency Business Days (which will include any day on which, commercial banks in the Local Jurisdiction would have been open or would have effected delivery of the Settlement Currency, but for the occurrence of a banking moratorium or other similar event related to the Currency Disruption Event applicable to the Transaction), the Calculation Agent will either (i) determine the applicable Exchange Rate on such ninth Currency Business Day taking into consideration all available information that the Calculation Agent deems relevant or (ii) designate the Local Currency as the Settlement Currency (which designation will bind the Obligor and the Obligee). If the Local Currency is designated as the Settlement Currency and any payment to be made in the Local Currency is further prevented by the existence of a Currency Disruption Event, the Calculation Agent will determine the applicable Exchange Rate in accordance with (i) above. In each case, the Settlement Date will be deemed to be postponed until the Currency Business Day that is one Settlement Cycle following such ninth Currency Business Day. Until such determination the Obligee will not be entitled to any payment from the Obligor pursuant to this Transaction and the Obligee will not be obliged to deliver any Shares or make any other payment to the Obligor pursuant to this Transaction until the Obligor has satisfied its obligations to the Obligee as provided above. If a Currency Disruption Event occurs on any day that is a Disrupted Day, the terms of the Transaction will be adjusted pursuant to the foregoing only after the necessary postponements or adjustments have been made pursuant to Section 6.6 of the 2002 Definitions.

“Currency Disruption Event” means the occurrence of an event, which may include the imposition by the Local Jurisdiction of any controls, that the Obligor determines has or will have the effect of preventing, restricting or delaying the Obligor, or any of its affiliated entities through whom it in good faith has effected any hedging transactions with respect to such Transaction, from entering into or settling a Currency Transaction.”

(1) “Currency Transaction” means a transaction entered into by the Obligor for the purpose of obtaining the Settlement Currency as of the Settlement Date, which transaction entails any of:

(a) converting the Local Currency into the Settlement Currency through customary legal channels or transferring within or from the Local Jurisdiction either currency;

- (b) converting the Local Currency into the Settlement Currency at an Exchange Rate at least as favorable as the rate for domestic institutions located in the Local Jurisdiction;
 - (c) delivering the Settlement Currency from accounts inside the Local Jurisdiction to accounts outside the Local Jurisdiction; or
 - (d) delivering the Local Currency between accounts inside the Local Jurisdiction or to a party that is a non-resident of the Local Jurisdiction.
- (2) “Exchange Rate” means the currency exchange rate at the relevant time that the Calculation Agent determines is required to convert one unit of the Local Currency into the Settlement Currency in an unrestricted currency market.
- (3) “Obligor” means the party with the obligation to make a payment in the Settlement Currency.
- (4) “Obligee” means the party entitled to receive a payment in the Settlement Currency.
- (5) “Local Jurisdiction” means the jurisdiction in which the Exchange is located.
- (6) “Local Currency” means the currency in which the Shares trade on the Exchange or in the case of an Index Transaction, the currency of the Local Jurisdiction”

Parties incorporating provisions similar to those above may wish to consider whether interest should be payable with respect to the currency in question during a delay caused by a Currency Disruption Event. Parties may also want to decide which party should bear the effects of exchange rate fluctuations during a Currency Disruption Event as well as any fees, costs or expenses involved with canceling settlement instructions or other related actions necessary due to the Currency Disruption Event.”

13. ARTICLE 13 - MISCELLANEOUS

The 2002 Definitions introduce a new Article 13 that offers several miscellaneous provisions. Sections 13.1, 13.2 and 13.4 are generally expanded versions of those representations contained in the 2002 ISDA Master Agreement and have been customized for the Transactions covered in the 2002 Definitions.

Section 13.1. Non-Reliance. The first of these new provisions is set forth in Section 13.1, Non-Reliance. If the parties specify “Non-Reliance” as applicable in the related Confirmation, each party represents to the other party that it enters into the Transaction as principal and not as agent; that neither the other party nor any of its Affiliates is acting as a fiduciary for it; that it is not relying on any representations other than those expressly set forth in the ISDA Master Agreement; that it has consulted with appropriate advisors and has made its own decisions based on its own judgment; and that it enters into the Transaction with a full understanding of the terms, conditions and risks of such Transaction.

Section 13.2. Agreements and Acknowledgments Regarding Hedging Activities. Section 13.2(a) sets forth a second elective provision that may be agreed to by the parties, “Agreements and Acknowledgments Regarding Hedging Activities”. If “Agreements and Acknowledgments Regarding Hedging Activities” is specified as applicable in the related Confirmation, each party agrees and acknowledges that it does not rely on the manner or method by which the other party or its Affiliates establish, maintain, adjust or unwind Hedge Positions. “Hedge Positions” is defined in Section 13.2(b) as arrangements a party enters into to hedge a Transaction or a portfolio of Transactions. By specifying that Section 13.2(a) applies, each party also agrees and acknowledges, among other things, that it is not relying on any written or oral communication between the parties or their respective Affiliates with respect to Hedging Activities. “Hedging Activities” is defined in Section 13.2(c) as activities or transactions undertaken in connection with a Hedge Position.

Section 13.3. Index Disclaimer. Section 13.3 defines a third elective provision that may be agreed to by the parties, “Index Disclaimer”. If “Index Disclaimer” is specified as applicable in the related Confirmation, each party agrees and acknowledges that the Transaction is not sponsored, endorsed, sold or promoted by the Index or the Index Sponsor, as well as certain other related agreements and acknowledgments. Each party also agrees and acknowledges that the Index Sponsor does not make any representations regarding the results to be obtained from using their Index or the level at which an Index may stand. Further, neither party will have any liability to the other party for an act or omission by the Index Sponsor. **PARTIES SHOULD NOTE THAT MANY INDEX SPONSORS HAVE SPECIFIC DISCLAIMERS AND SHOULD CONSIDER THE IMPACT OF ANY SUCH DISCLAIMERS.**

Parties should consult with a legal adviser to determine whether a license agreement is required when a particular Index is referenced in a Transaction.

Section 13.4. Additional Acknowledgments. Section 13.4 defines a fourth elective provision that may be agreed to by the parties, “Additional Acknowledgments”. This Section sets forth several acknowledgments, such as that the other party and its Affiliates are not providing any specialized advice in respect of the Transaction; that it has been given the opportunity to obtain information on the terms and conditions of the Transaction that are necessary for it to evaluate the merits and risks of the Transaction; and that the other party and its Affiliates may engage in trading on the Shares of the Issuer underlying the Transaction.

Exhibit A

2002 EQUITY DERIVATIVES DEFINITIONS

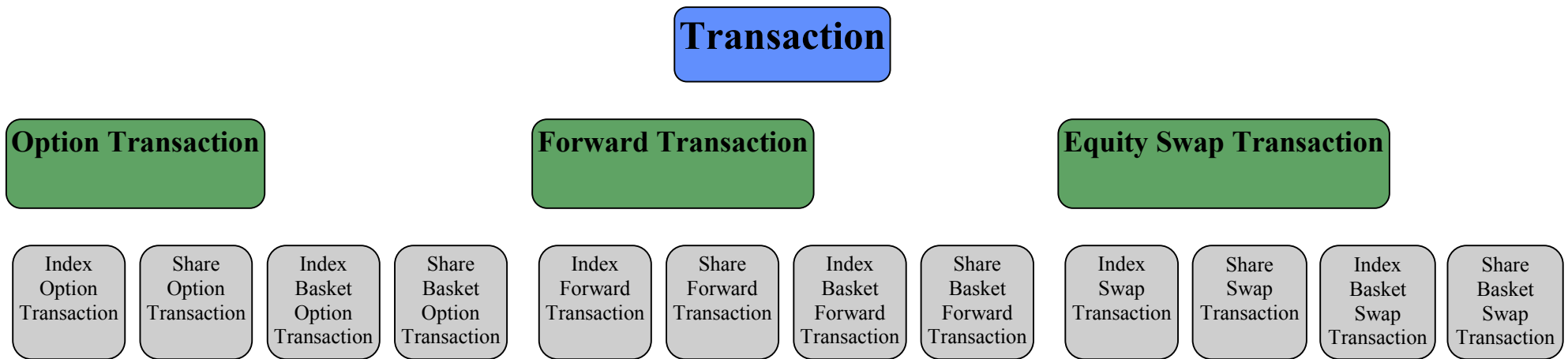
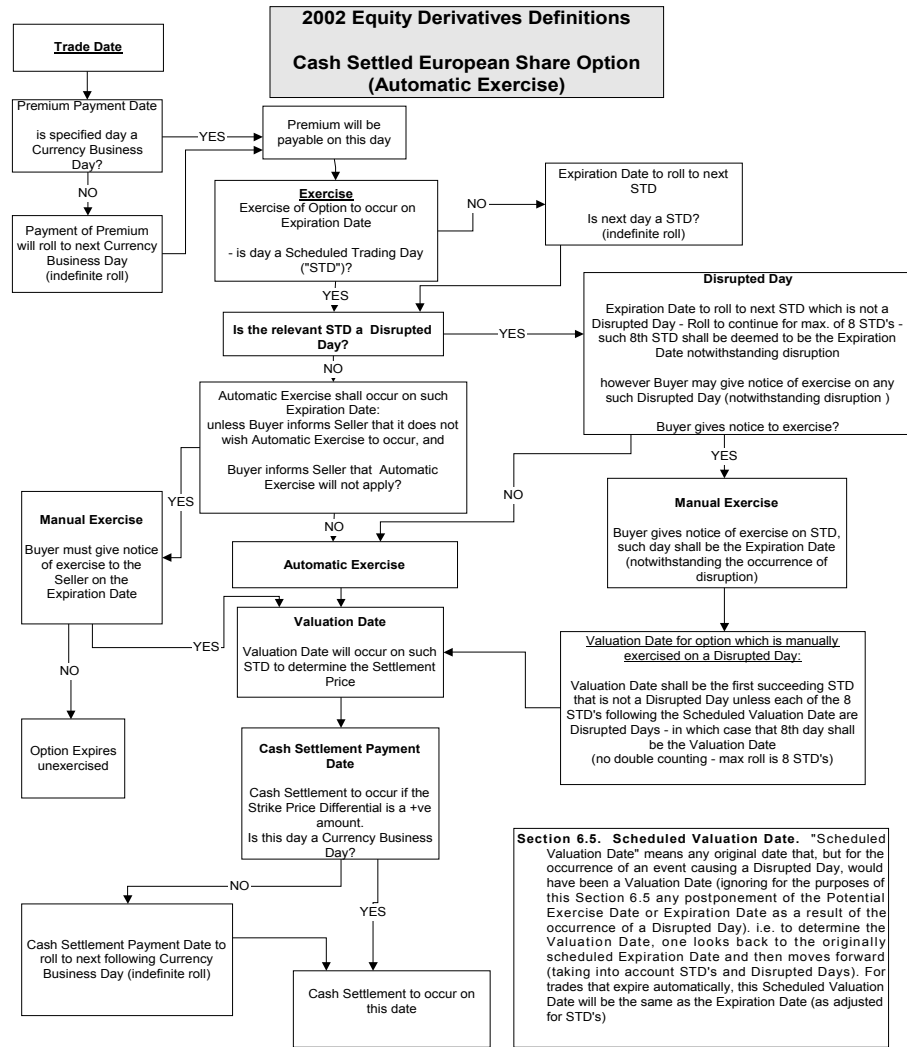


Exhibit B



Definitions:

Currency Business Day S1.33.

1. EUR: TARGET days
2. All other Currencies: days on which commercial banks are open for business in the principal financial centre for that currency

Automatic Exercise S3.4:

All options will be deemed to be automatically exercised on the Expiration Date at the Expiration Time

Disrupted Day S6.4: A STD which:

- (i) Exchange or Related Exchange fails to open for trading, or
- (ii) a day on which a Market Disruption Event occurs

Market Disruption Event S6.3: A STD which on of the following occurs:

- (i) material Trading Disruption during last hour
- (ii) material Exchange Disruption during last hour, or
- (iii) Early Closure of the the Exchange or related Exchange prior to its Scheduled Closing Time

Exhibit C

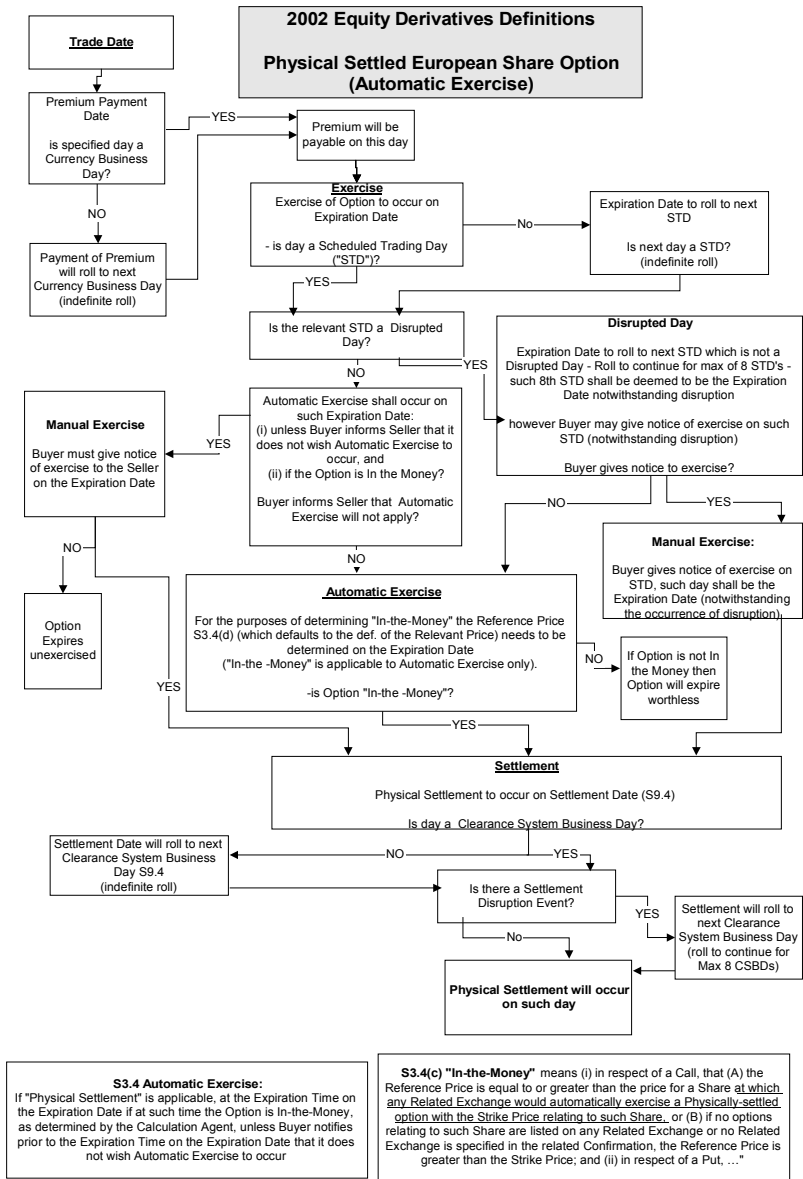


Exhibit D

2002 ISDA EQUITY DERIVATIVES DEFINITIONS

GUIDANCE NOTES

SHARE BASKET VALUATIONS

(the following applies if standard ISDA provisions apply)

Option Cash Settlement Amount = No. of Options x Strike Price Differential x Option Entitlement (if any)

Strike Price Differential (for a Call) = the greater of (i) zero and (ii) SP - Strike Price
Settlement Price ("SP") means the sum of (for each Share comprised in the Basket):
Relevant Price x Number of Shares in Basket (ie weighting of relevant Share)

Valuation affected by a non-Scheduled Trading Day

(eg the Exchange for Share B is not scheduled to open for 3 days starting on the originally scheduled Valuation Date)

Result: Valuation for all Shares roll to next STD

Valuation affected by a Disrupted Day

(eg the Exchange for Share B fails to open or there is a Market Disruption Event in respect of Share B on the Scheduled Valuation Date ("SVD"))

Result: "Fix what you can"; only the affected Share rolls to next STD

When Share or Basket VALUATION IS DISRUPTED - you NEVER take prices from previous days.

Valuation Date must occur on a STD; for Baskets this means that each Exchange and each Related Exchange (for each Share comprised in the Basket) must be scheduled to be open for trading; otherwise the whole basket will roll forward (indefinitely).

Valuation Date for Share B to roll until (i) next STD which is not a Disrupted Day, or (ii) 8 STD's following SVD

Valuation Date for Share A and C which are not affected by disruption will occur on SVD (no roll)

CONSEQUENCES OF MERGER EVENTS and TENDER OFFERS

The 2002 Definitions have added a new event of Tender Offer (any event that results in an entity getting or having the right to obtain, greater than 10% and less than 100% of the voting rights of an issuer) and extended the choice of consequences that the 1996 Definitions provided. Now, in addition to "Alternative Obligation", "Cancellation and Payment" and "Options Exchange Adjustment", the following consequences are available for Merger Events and for Tender Offers:

"Calculation Agent Adjustment" - Calculation Agent make appropriate adjustments to account for Merger Event PROVIDED THAT no adjustments will be made to account for changes in volatility, expected dividends, stock loan rates or liquidity, unless no adjustment could produce a commercially reasonable result, in which case "Cancellation and Payment" will apply.

"Modified Calculation Agent Adjustment" - same as above, EXCEPT THAT adjustments to account for changes in volatility, expected dividends, stock loan rates or liquidity ARE PERMITTED.

"Component Adjustment" - only relevant for Share-for-Combined Merger Event. For the "New Share" portion apply election specified for Share-for-Share, and for "Other Consideration" portion apply election specified for and Share-for-Other.

"Alternative Obligation" (elective is not available for Tender Offers) here the New Shares and/or Other Consideration will replace affected Shares, with Calculation Agent making necessary adjustments.

"Partial Cancellation and Payment" - only relevant for basket trades; the portion of the Transaction represented by shares affected by Merger Event/Tender Offer will be terminated and Transaction will continue with remaining basket, with Calculation Agent making necessary adjustments

"Cancellation and Payment" - (i) for Options, trade is cancelled as of Merger/Tender Offer Date. Seller to pay Buyer an amount in accordance with S12.7(b); and (ii) For Forwards and Equity Swaps, trade is cancelled as of Merger/Tender Offer Date, one party to pay other party an amount in accordance with S12.7(c)

If Cancellation and Payment or Partial Cancellation and Payment applies, then the calculation of the amount to be paid will depend upon whether the Transaction is an Option or a Forward or an Equity Swap. For Forwards and Equity Swaps the "Cancellation Amount" is calculated on the same basis as the Close-out Amount under the 2002 Master Agreement in (S12.7(c)) (no elections need to be made by parties), **however in relation to Options** - the parties will agree termination amount within 5 days; if no agreement then parties revert to a fallback that needs to be specified in the confirmation; choice is between: (i) **Agreed Model** - a specific methodology set out in the definitions, or (ii) **"Calculation Agent Determination"** - Calculation Agent determines termination amount.

ADDITIONAL DISRUPTION EVENTS

The 2002 Definitions now include a list of 7 additional disruption events, which parties can decide to "turn on or off", with specified consequences upon their occurrence.

"Change in Law" - if, as a result of a change in, or change in interpretation of, law/regulation (including tax), it has become illegal to hold or dispose of underlying shares or a materially increased cost will be incurred in performing obligations under a Transaction. Consequence is elective termination of Transaction by either party.

"Failure to Deliver" - same as Failure to Deliver under 1996 Definitions. Only applicable for Physically Settled Transactions. Consequence is that what Shares that can be delivered, will be delivered and the Transaction may be terminated by the Receiving Party.

"Insolvency Filing" - insolvency proceedings are commenced against share issuer by itself or a regulator/supervisor (NB does not include commencement of proceedings by creditors to which share issuer has not consented). Consequence is elective termination of Transaction by either party.

"Hedging Disruption" - party specified in confirmation as "Hedging Party" is unable to hedge its position in respect of Transaction. Consequence is elective termination of Transaction by Hedging Party.

"Increased Cost of Hedging" - Hedging Party would suffer materially increased cost (whether tax, expenses or fees) for hedging its position, otherwise than as a result of a deterioration of its own creditworthiness. Consequence is either (i) terms of Transaction are adjusted so that other party pays an amount to Hedging Party to account for increased costs or (ii) elective termination of Transaction by party as specified in the Def's.

"Loss of Stock Borrow" - Hedging Party unable to borrow shares from market at rate less than stock loan rate specified in Confirmation. Consequence is that other party can lend shares to Hedging Party at rate less than specified rate, other party can direct Hedging Party to a third party who can so lend the shares, or elective termination of Transaction by Hedging Party. **NB** if this is turned on, parties need to specify the relevant stock loan rate.

"Increased Cost of Stock Borrow" - Hedging Party would incur a stock loan rate greater than specified rate in Confirmation. Consequence is either (i) terms of Transaction are adjusted so that other party pays an amount to Hedging Party to account for increased costs or (ii) elective termination of Transaction by party as specified in the Def's.

AVERAGING DATE DISRUPTION

Option Cash Settlement Amount = No. of Options x Strike Price Differential x Option Entitlement (if any)

Strike Price Differential (for a Call) = the greater of (i) zero and (ii) SP - Strike Price
Settlement Price ("SP") means the arithmetic mean of the Relevant Prices
Relevant Price, is determined by the Calculation Agent (as provided in the Confirmation) on each Averaging Date.
Averaging Dates ("AD") are defined as being each date as specified in the Confirmation, or if such day is not a Scheduled Trading Day ("STD") the next following STD.

Examples below illustrate the effect of disruptions and non-Scheduled Trading Days.. (Assume AD's specified in the Confirmation are:- 27th, 28th, 29th, 30th and 31st of Dec.)

Example 1: 30th December is not a STD.
The 30th is not a STD so it rolls to next STD, this has the effect of "doubling-up" ie the price taken on the 31st shall count for 2 Averaging Dates. Note: if the final AD is not a STD then the "term" of the Option shall be extended.

Example 2: 30th December is a STD but is also a Disrupted Day, the result will depend on whether Omission, Postponement or Modified Postponement is elected for Averaging Date Disruption:

Omission: Averaging Date is omitted - the "term" of the Option will not be affected.

Postponement: Averaging Date rolls to next STD which is not a Disrupted Day (max. 8 day roll), this will result in "doubling-up" if consecutive days are specified in Confirmation as Averaging Dates - this can cause Expiration to roll forward and extend the "term" of the Option

Modified Postponement: Averaging Date rolls to next STD which is not a Disrupted Day (max. 8 day roll) and which is not already an Averaging Date (ie no "doubling-up") - this can cause Expiration to roll forward and extend the "term" of the Option

Exhibit E

EQUITY SWAP

GUIDANCE NOTES

Equity Leg: (2002 ISDA Equity Definitions applicable)

On each Cash Settlement Payment Date ("CSPD") the Equity Amount ("EA") will be payable by:

(i) the Equity Amount Payer, if the EA is positive, or
 (ii) the Equity Amount Receiver if the EA is negative

The EA is calculated on each Valuation Date ("VD") as follows:

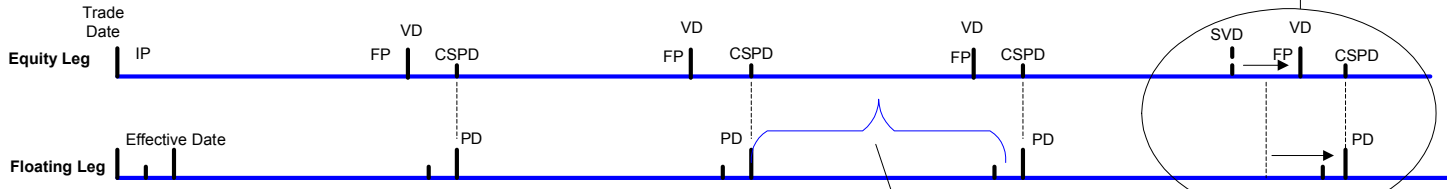
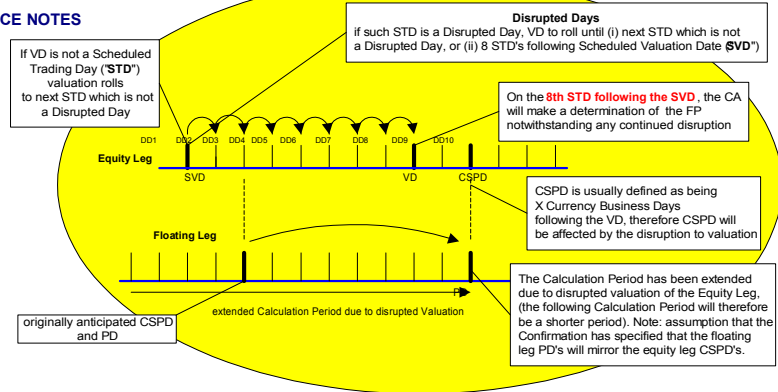
$EA = \text{Equity Notional Amount} \times \text{Rate of Return}$

Equity Notional Amount ("ENA"): initially an amount equal to the notional as specified in Confirmation; for each subsequent CSPD the ENA is adjusted by an amount equal to the EA (+ or -) relating to the previous CSPD provided that **Equity Notional Reset** is applicable.

Rate of Return = $(FP - IP) / IP \times \text{Multiplier}$ (if any)

The Final Price ("FP"): is determined by the Calculation Agent (as provided in the Confirmation) on each Valuation Date.

Initial Price ("IP"): (i) for calculation of initial EA, the share price at the start of swap (as provided in the Confirmation) and (ii) on each subsequent VD, the IP shall be the FP relating to the immediately preceding VD.



Floating Leg: (2000 ISDA Definitions applicable)

On each Payment Date ("PD") the Floating Rate Payer (the Equity Amount Receiver) will pay the Floating Amount.

$\text{Floating Amount} = NA \times FR \pm \text{Spread} \times \text{Floating Rate Day Count Fraction}$

Notional Amount ("NA"): defined by many parties as the ENA, in these circumstances the floating leg would be subject to any application of Equity Notional Reset

Floating Rate ("FR"): the Relevant Rate on the the relevant Reset Date

Relevant Rate: rate determined on the Reset Date by reference to the relevant Floating Rate Option specified in the Confirmation (eg for EUR - EURIBOR - Telerate, page 12 of the Annex to the 2000 Definitions describes the source and timing that the rate should be taken; often 2 [Target][Currency] Business Days prior to the Reset Date)

Reset Date: as specified in the Confirmation (usually the first day of each Calculation Period)

Floating Rate Day Count Fraction ("FRDCF"): as specified in the Confirmation, it should be noted that if the Calculation Period is extended for example because it is tied to the equity leg, the Floating Amount will increase (due to the FRDCF being greater).

PD's: Equity Swaps are often traded on the basis that the PD's will mirror the CSPD's (to achieve the benefits of payment netting) - the above example is based on this assumption.

Effect of Disruption to Valuation

Reset Dates usually the first day of Calculation Period

Relevant Rate is often taken 2 [Target][Currency] Business Days prior to the Reset Date (see Annex)

Calculation Periods, each period:-
 From and including:- Effective Date or PD;
 To and excluding:- PD or Termination Date

This Guidance Note does not deal with the topic of Dividends

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Exhibit F

Market Disruption Events Relating to Multi-Jurisdiction Index Baskets or Multi-Jurisdiction Share Baskets:

Parties may wish to address revisions to a Market Disruption Event (as discussed in Section 6.3 above) as it relates to multi-jurisdiction Baskets, and consider the following example and the three scenarios described below coupled with suggested additional language, where relevant:

A share basket call option is struck at 100% or \$120. It contains one Share of X, which is trading on the LSE at \$40/Share; two Shares of Y, which is trading on the New York Stock Exchange (“NYSE”) at \$20/Share and four Shares of Z, which is trading on the Frankfurt Stock Exchange (“FSE”) at \$10/Share.

The Buyer of the Option attempts to exercise the option on June 11, which is a Scheduled Trading Day on the NYSE, but not on the London Stock Exchange (“LSE”) or FSE. Share X trades at \$45 on June 11.

June 12 is a Scheduled Trading Day on all three Exchanges and is not a Disrupted Day for any Shares (X, Y or Z). Share X trades at \$43, Share Y trades at \$22 and Share Z trades at \$8 on June 12.

(i) Under the 2002 Definitions as drafted, the attempted exercise of June 11 will fail as it is not a Scheduled Trading Day for all three constituent shares. On June 12, if the Buyer attempts to exercise the Option again, it will be a successful exercise as it is a Scheduled Trading Day for the whole Basket. As June 12 is the Exercise Date, June 12 will also be the Valuation Date for X, Y and Z because it is the first Scheduled Trading Day which is not a Disrupted Day for all three Shares.

The basket value under this approach will be \$119 or \$43 (1 Share of X on June 12) + \$44 (two Shares of Y on June 12) + \$32 (four Shares of Z on June 12). The Option is out of the money.

(ii) In another scenario, parties may wish to allow exercise of the Option and to value Share X on June 11 because it is a Scheduled Trading Day that is not a Disrupted Day for the NYSE that day (even though it is not a Scheduled Trading Day for the other Shares in the Basket) and value Shares Y and Z on June 12 which is the next Scheduled Trading Day and for those Exchanges, in which case the following language may be used:

The basket value under this approach will be \$121 or \$45(one Share of X on June 11) + \$44(two Shares of Y on June 12) + 32 (four Shares of Z on June 12). The Option is in the money and the payout is \$1.

Separate Valuation/ Combined Calculation:

Notwithstanding anything to the contrary in the 2002 Definitions, as applicable, Scheduled Trading Day, Exchange Business Day, Averaging Date, Valuation Date, Disrupted Day, Valuation Time, Relevant Price, and any other variable relevant to this Transaction as the Calculation Agent determines appropriate, shall be determined separately in respect of each [Share] [Index] of the Basket, as if such [Share][Index] was a separate [Share] [Index] [Swap] [Option] [Forward] Transaction in order to effect the consequence that each of such [Shares] [Indices] be valued independently but that such values

combined to produce a single value for the Basket. For purposes of determining each Payment Date or Settlement Date, the Valuation Date will be the latest of such Valuation Dates to occur.

(iii) In a final scenario, parties may wish to treat the Basket as a series of separate options relating to each Share with separate exercise, valuation, payment and/or settlement processes.

For example, the part, or tranche, of the Option relating to Share X would be exercised and valued on June 11 because it is a Scheduled Trading Day that is not a Disrupted Day for the NYSE (even though it is not a Scheduled Trading Day for the other Shares in the basket) and Shares Y and Z would be exercised and valued on June 12 which is the next Scheduled Trading Day that is not a Disrupted Day for those Exchanges.

Under this approach, (i) the Option on Share X will wind up pay out \$5, or \$45 (the June 11 price of Share X) - \$40 (the Share X Strike Price) – this would be paid out three days after June 11, (ii) the Option on Share Y will pay out \$4 or two times \$2 (which is \$22, the June 12 price of Share Y - \$20, the Share Y Strike Price) – this would be paid out three days after June 12 and (iii) the Option on Share Z will expire out of the money since \$8, the price of Share Z on June 12, is less than \$10, the Share Z Strike Price.

Parties wishing to adopt this approach may wish to consider using the following:

Tranche Valuation and Calculation:	Notwithstanding anything to the contrary in the 2002 Definitions, as applicable, Scheduled Trading Day, Exchange Business Day, Averaging Date, Valuation Date, Disrupted Day, Valuation Time, Relevant Price, Settlement Price, Final Price, Payment Date, Settlement Date and any other variable relevant to this Transaction as the Calculation Agent determines appropriate, shall be determined separately in respect of each [Share] [Index] of the Basket, as if such [Share][Index] was a separate [Share] [Index] [Swap] [Option] [Forward] Transaction such that each of such [Shares] [Indices] be exercised and valued, and payment or settlement obligations be determined and occur, independently as if the relevant Transaction were separate Transactions that relate solely to each of such [Shares] [Indices].
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Exhibit G

Issuer of Global Depository Receipts and American Depository Receipts

If parties wish to clarify that the Issuer for purposes of Article 11 is the Issuer of the Shares underlying the Global Depository Receipts and American Depository Receipts, the following provisions with respect to Shares as defined in Section 1.14 should be added:

- (i) “For the purposes of these additional provisions, the following definitions will apply:
 - (A) “Depository” means, in relation to the Shares, the issuer of the Shares.
 - (B) “Deposit Agreement” means, in relation to the Shares, the agreement(s) or other instrument(s) constituting the Shares, as from time to time amended or supplemented in accordance with its (their) terms.

The definition of Potential Adjustment Event in Section 11.2(e) of the 2002 Definitions shall include, in relation to the Shares:

- (A) the occurrence of any Potential Adjustment Event in relation to the underlying Shares or any other shares or securities represented by the Shares; and
- (B) the making of any amendment or supplement to the terms of the Depository Agreement;

and, in relation to the Shares, “Calculation Agent Adjustment” shall apply following the declaration by the Depository or the Issuer of the terms of any Potential Adjustment Event.

- (ii) The definition of Merger Event in Section 12.1 of the 2002 Definitions shall include, in relation to Shares, the occurrence of any Merger Event in relation to the underlying Shares.
- (iii) The definitions of “Nationalization” and “Insolvency” in Section 12.6 of the 2002 Definitions shall be construed in relation to the Shares as if references to the Shares of the Issuers were references to the underlying Shares.
- (iv) Sections 12.7 and 12.8 of the 2002 Definitions shall be construed in relation to the Shares as if references to the relevant Shares therein were references to the underlying Shares and references therein to the Exchange and to Exchange Business Days shall be customized as if the Exchange in respect of the underlying Shares were the “Exchange” in respect of the Shares.
- (v) If the Deposit Agreement is terminated, then on or after the date of such termination, references to Shares herein shall be replaced by references to the underlying Shares and the Calculation Agent will adjust any relevant terms and will determine the effective date of such replacement and adjustments.
- (vi) The definition of Market Disruption Event in Section 6.3(a) of the 2002 Definitions shall include, in relation to the Shares, the occurrence of a Market Disruption Event in relation to the underlying Shares.

The definition of Issuer in Section 1.16 of the 2002 Definitions shall include, in relation to the Shares, the Issuer in respect of the underlying Shares.

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Exhibit H

EuroStoxx Confirmation Definitions for 2002 ISDA Equity Derivatives Definitions

1. European Option with Futures Price Valuation (assuming Futures or Options hedge)¹

Index:	The Dow Jones EURO STOXX 50 SM (Bloomberg Ticker: SX5E).
Exchange(s):	In respect of each component security of the Index (each, a “ Component Security ”), the principal stock exchange on which such Component Security is principally traded, as determined by the Calculation Agent.
Related Exchange:	Eurex.
Futures Price Valuation:	Applicable, provided that the words “the level of the relevant Index at the close of the regular trading session on the relevant Exchange” on lines four and five of Section 6.8(e) of the 2002 Definitions shall be deleted and replaced with the words “the official closing level of the Index as calculated and published by the Index Sponsor”.
Exchange-traded Contract:	The options contract relating to the Index for delivery in [MONTH AND YEAR] and traded on the Related Exchange.
Expiration Date:	The Valuation Date (irrespective of whether such day is a Scheduled Trading Day or a Disrupted Day), subject to the provisions of Section 6.8(e) of the 2002 Definitions.
Expiration Time:	The time at which the Official Settlement Price is published or, where Section 6.8(e) of the 2002 Definitions applies as a result of the fact that the Exchange-traded Contract never commences or is permanently discontinued, the Valuation Time.
Exercise Date:	The day during the Exercise Period on which the Options are, or are deemed to be, exercised.
Scheduled Trading Day:	Any day on which: (i) the Index Sponsor is scheduled to publish the level of the Index; and (ii) the Related Exchange is scheduled to be open for trading for its regular trading session.
Exchange Business Day:	Any Scheduled Trading Day on which: (i) the Index Sponsor publishes the level of the Index; and (ii) the Related Exchange is open for trading during its regular trading session, notwithstanding any Exchange or the Related Exchange closing prior to its Scheduled Closing Time.
Valuation Time:	For the purposes of this Transaction, means: (i) for the purposes of determining whether a Market Disruption Event has occurred: (a) in respect of any Component Security, the Scheduled Closing Time on the Exchange in respect of such Component Security, and (b) in respect of any options contracts or future contracts on the Index, the close of trading on the Related Exchange; and (ii) in all other

¹ If anything other than European Option, then the definitions of “Exercise Date” and “Potential Exercise Date” will need to be reviewed.

circumstances, the time at which the official closing level of the Index is calculated and published by the Index Sponsor.

Market Disruption Event:

For the purposes of this Transaction, means either:

- (i) (a) the occurrence or existence, in respect of any Component Security, of:
 - (1) a Trading Disruption Event in respect of such Component Security, which the Calculation Agent determines is material, at any time during the one hour period that ends at the relevant Valuation Time in respect of the Exchange on which such Component Security is principally traded;
 - (2) an Exchange Disruption in respect of such Component Security, which the Calculation Agent determines is material, at any time during the one hour period that ends at the relevant Valuation Time in respect of the Exchange on which such Component Security is principally traded; OR
 - (3) an Early Closure in respect of such Component Security; AND
- (b) the aggregate of all Component Securities in respect of which a Trading Disruption Event, an Exchange Disruption or an Early Closure occurs or exists comprises 20 per cent. or more of the level of the Index; OR
- (ii) the occurrence or existence, in respect of futures or options contracts relating to the Index, of: (a) a Trading Disruption; (b) an Exchange Disruption, which in either case the Calculation Agent determines is material, at any time during the one hour period that ends at the Valuation Time in respect of the Related Exchange; or (c) an Early Closure, in each case in respect of such futures or options contracts.

For the purposes of determining whether a Market Disruption Event exists in respect of a Component Security at any time, if a Market Disruption Event occurs in respect of such Component Security at that time, then the relevant percentage contribution of that Component Security to the level of the Index shall be based on a comparison of (x) the portion of the level of the Index attributable to that Component Security to (y) the overall level of the Index, in each case using the official opening weightings as published by the Sponsor as part of the market "opening data".

Trading Disruption:

For the purposes of this Transaction, means any suspension of or limitation imposed on trading by the relevant Exchange or Related Exchange or otherwise and whether by reason of movements in price exceeding limits permitted by the relevant Exchange or Related Exchange or otherwise: (i) relating to any Component Security on the Exchange in respect of such Component Security; or (ii) in futures or options contracts relating to the Index on the Related Exchange.

Exchange Disruption: For the purposes of this Transaction, means any event (other than an Early Closure) that disrupts or impairs (as determined by the Calculation Agent) the ability of market participants in general to effect transactions in, or obtain market values for: (i) any Component Security on the Exchange in respect of such Component Security; or (ii) futures or options contracts relating to the Index on the Related Exchange.

Early Closure: For the purposes of this Transaction, means the closure on any Exchange Business Day of the Exchange in respect of any Component Security or the Related Exchange prior to its Scheduled Closing Time unless such earlier closing is announced by such Exchange or Related Exchange (as the case may be) at least one hour prior to the earlier of: (i) the actual closing time for the regular trading session on such Exchange or Related Exchange (as the case may be) on such Exchange Business Day; and (ii) the submission deadline for orders to be entered into the Exchange or Related Exchange system for execution at the relevant Valuation Time on such Exchange Business Day.

Disrupted Day: For the purposes of this Transaction, means any Scheduled Trading Day on which: (i) the Index Sponsor fails to publish the level of the Index; (ii) the Related Exchange fails to open for trading during its regular trading session; or (iii) a Market Disruption Event has occurred. The Calculation Agent shall as soon as reasonably practicable under the circumstances notify the parties or other party, as the case may be, of the occurrence of a Disrupted Day on any day that, but for the occurrence of a Disrupted Day, would have been an Averaging Date, a Valuation Date, a Potential Exercise Date, a Knock-in Determination Day, a Knock-out Determination Day or an Expiration Date. Without limiting the obligation of the Calculation Agent to notify the parties as set forth in the preceding sentence, failure by the Calculation Agent to notify the parties of the occurrence of a Disrupted Day shall not affect the validity of the occurrence and effect of such Disrupted Day on this Transaction.

2. European Option with Cash Valuation (i.e., taking Eurostoxx level)

Index:	The Dow Jones EURO STOXX 50 SM (Bloomberg Ticker: SX5E).
Exchange(s):	In respect of each component security of the Index (each, a “ Component Security ”), the principal stock exchange on which such Component Security is principally traded, as determined by the Calculation Agent.
Related Exchange:	Eurex.
Expiration Date:	[DATE].
Expiration Time:	The Valuation Time.
Scheduled Trading Day:	Any day on which: (i) the Index Sponsor is scheduled to publish the level of the Index; and (ii) the Related Exchange is scheduled to be open for trading for its regular trading session.
Exchange Business Day:	Any Scheduled Trading Day on which: (i) the Index Sponsor publishes the level of the Index; and (ii) the Related Exchange is open for trading during its regular trading session, notwithstanding any Exchange or the Related Exchange closing prior to its Scheduled Closing Time.
Valuation Time:	For the purposes of this Transaction, means: (i) for the purposes of determining whether a Market Disruption Event has occurred: (a) in respect of any Component Security, the Scheduled Closing Time on the Exchange in respect of such Component Security, and (b) in respect of any options contracts or future contracts on the Index, the close of trading on the Related Exchange; and (ii) in all other circumstances, the time at which the official closing level of the Index is calculated and published by the Index Sponsor.
Market Disruption Event:	For the purposes of this Transaction, means either: <ul style="list-style-type: none">(i) (a) the occurrence or existence, in respect of any Component Security, of:<ul style="list-style-type: none">(1) a Trading Disruption in respect of such Component Security, which the Calculation Agent determines is material, at any time during the one hour period that ends at the relevant Valuation Time in respect of the Exchange on which such Component Security is principally traded;(2) an Exchange Disruption in respect of such Component Security, which the Calculation Agent determines is material, at any time during the one hour period that ends at the relevant Valuation Time in respect of the Exchange on which such Component Security is principally traded; OR(3) an Early Closure in respect of such Component Security; AND

- (b) the aggregate of all Component Securities in respect of which a Trading Disruption, an Exchange Disruption or an Early Closure occurs or exists comprises 20 per cent. or more of the level of the Index; OR
- (ii) the occurrence or existence, in respect of futures or options contracts relating to the Index, of: (a) a Trading Disruption; (b) an Exchange Disruption, which in either case the Calculation Agent determines is material, at any time during the one hour period that ends at the Valuation Time in respect of the Related Exchange; or (c) an Early Closure, in each case in respect of such futures or options contracts.

For the purposes of determining whether a Market Disruption Event exists in respect of a Component Security at any time, if a Market Disruption Event occurs in respect of such Component Security at that time, then the relevant percentage contribution of that Component Security to the level of the Index shall be based on a comparison of (x) the portion of the level of the Index attributable to that Component Security to (y) the overall level of the Index, in each case using the official opening weightings as published by the Sponsor as part of the market "opening data".

Trading Disruption: For the purposes of this Transaction, means any suspension of or limitation imposed on trading by the relevant Exchange or Related Exchange or otherwise and whether by reason of movements in price exceeding limits permitted by the relevant Exchange or Related Exchange or otherwise: (i) relating to any Component Security on the Exchange in respect of such Component Security; or (ii) in futures or options contracts relating to the Index on the Related Exchange.

Exchange Disruption: For the purposes of this Transaction, means any event (other than an Early Closure) that disrupts or impairs (as determined by the Calculation Agent) the ability of market participants in general to effect transactions in, or obtain market values for: (i) any Component Security on the Exchange in respect of such Component Security; or (ii) futures or options contracts relating to the Index on the Related Exchange.

Early Closure: For the purposes of this Transaction, means the closure on any Exchange Business Day of the Exchange in respect of any Component Security or the Related Exchange prior to its Scheduled Closing Time unless such earlier closing is announced by such Exchange or Related Exchange (as the case may be) at least one hour prior to the earlier of: (i) the actual closing time for the regular trading session on such Exchange or Related Exchange (as the case may be) on such Exchange Business Day; and (ii) the submission deadline for orders to be entered into the Exchange or Related Exchange system for execution at the relevant Valuation Time on such Exchange Business Day.

Disrupted Day: For the purposes of this Transaction, means any Scheduled Trading Day on which: (i) the Index Sponsor fails to publish the level of the Index; (ii) the Related Exchange fails to open for trading during its regular trading session; or (iii) a Market Disruption Event has occurred. The Calculation Agent shall as soon as reasonably practicable under the circumstances notify the parties or other party, as the case may be, of the occurrence of a Disrupted Day on any day that, but for the occurrence of a Disrupted Day, would have been an Averaging Date, a Valuation Date, a Potential Exercise Date, a Knock-in Determination Day, a Knock-out

Determination Day or an Expiration Date. Without limiting the obligation of the Calculation Agent to notify the parties as set forth in the preceding sentence, failure by the Calculation Agent to notify the parties of the occurrence of a Disrupted Day shall not affect the validity of the occurrence and effect of such Disrupted Day on this Transaction.