

[19.27] March 1994 Australian Addendum No. 11 - Commodity Transactions

Care! Commencing 1 January 2002 AFMA no longer recommends using this Addendum. See [19.17A].

MARCH 1994
AUSTRALIAN ADDENDUM No. 11 -
COMMODITY TRANSACTIONS

ADDENDUM TO SCHEDULE TO MASTER AGREEMENT OF
INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

(1) Application

By incorporating this Addendum in their ISDA Master Agreement, the parties agree that every Commodity Transaction between them entered into after that time is a Transaction governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated.

This applies whether or not the parties:

- (a) refer to the ISDA Master Agreement or this Addendum; or
- (b) state that a Commodity Transaction is governed by the terms of any other master agreement

when entering into or confirming the Commodity Transaction.

If a Commodity Transaction is a Transaction governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated, then the terms of any other master agreement do not apply to it even if the parties state that the Commodity Transaction is governed by the terms of any other master agreement when entering into or confirming the Commodity Transaction.

(2) Confirmations

- (a) The parties acknowledge that Commodity Transactions governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated may be confirmed by various methods including, without limitation, the following:

- Telex
- Letter
- Reuters direct dealing system
- Telerate trading service
- Facsimile

- (b) A confirmation produced by any method constitutes a Confirmation for the purpose of this Agreement. Each such Confirmation supplements, forms part of, and is subject to the ISDA Master Agreement in which this Addendum is incorporated.
- (c) The parties acknowledge that some Confirmations may describe some items by a term other than the defined term in this Addendum or in the 1993 ISDA Commodity Derivative Definitions. For example:

"Settlement Date" may be referred to as "Maturity Date" or "Value Date"; and

"Floating Price" may be referred to as "Reference Price".

In any case where the intention is clear that a term used in a Confirmation is intended to specify the particulars for a defined term in this Addendum or the 1993 ISDA Commodity Derivative Definitions, then that term is to be deemed to be that defined term.

- (d) References to ounces in relation to precious metals in a Confirmation are references to troy ounces.

(3) **Definitions**

- (a) The definitions and provisions contained in the 1991 ISDA Definitions, the 1993 ISDA Commodity Derivative Definitions and in this Addendum are incorporated into each Confirmation. If there is an inconsistency between those definitions and provisions and any such Confirmation, the Confirmation will govern.
- (b) In this Addendum "Commodity Transaction" means any transaction which is or is described in its confirmation as a forward commodity transaction, a spot commodity transaction or a commodity option whether or not the Settlement Date is fixed and any other type of transaction falling within the meaning of "Transaction" in the 1993 ISDA Commodity Derivative Definitions. "Commodity Transaction" also means any other type of transaction which the parties agree to be a Commodity Transaction.
- (c) Each Commodity Transaction is a "Transaction" for the purpose of the ISDA Master Agreement in which this Addendum is incorporated.
- (d) In this Addendum references to the 1991 ISDA Definitions and the 1993 ISDA Commodity Derivative Definitions are references to those publications as published by the International Swaps and Derivatives Association, Inc.

(4) **Certain definitions and other provisions relating to forward commodity contracts and spot commodity contracts**

- (a) The following definitions apply to any transaction which is, or is described in its confirmation as, a forward commodity contract or a spot commodity contract (whether or not the Settlement Date is fixed).

"Buyer" means the party specified as buyer in the Confirmation.

If **"Cash Settlement"** is specified to be applicable, it means that:

- (i) the Buyer must pay the Cash Settlement Amount to the Seller on the Settlement Date, if the Final Settlement Price exceeds the Floating Price; or
- (ii) the Seller must pay the Cash Settlement Amount to the Buyer on the Settlement Date, if the Floating Price exceeds the Final Settlement Price.

"Cash Settlement Amount" means, unless the parties otherwise specify in the Confirmation, the absolute value of an amount calculated in accordance with the following formula:

Quantity (expressed as a number) x the difference between the Final Settlement Price and the Floating Price

"Final Settlement Price" means the price per Unit which the Seller would receive on the Settlement Date in accordance with the agreement between the parties if the Commodity were to be physically delivered.

"Fixed Amount" means, unless the parties otherwise specify in the Confirmation, an amount equal to the Quantity multiplied by the Final Settlement Price.

If **"Physical Settlement"** is specified to be applicable, it means the Seller must deliver the Quantity to the Buyer on the Settlement Date and the Buyer must pay the Fixed Amount to the Seller on the Settlement Date.

"Quantity" means the quantity (expressed in Units) of the Commodity the subject of the Transaction.

"Seller" means the party specified as seller in the Confirmation.

"Spot Price" means the spot price for a Commodity agreed to be prevailing on the Trade Date, expressed as a price per relevant Unit for settlement within two Business Days after the Trade Date.

- (b) When a Commodity Transaction is, or is described in its confirmation as, a floating forward transaction, then the Settlement Date is to be a Business Day elected by the Seller (which election is to be made by giving the Buyer at least two Business Days' notice).

(5) **Certain definitions relating to commodity options**

The following definitions apply to any Transaction which is or is described in its confirmation as a commodity option and for which there is no "Physical Settlement" procedure specified in Article 8 of the 1993 ISDA Commodity Derivative Definitions. Such a Transaction is also an "Option" for the purpose of the 1993 ISDA Commodity Derivative Definitions.

"Expiration Time" means the latest time on the Expiration Date at which the Seller will accept a Notice of Exercise.

"Fixed Amount" means, unless the parties otherwise specify in the Confirmation, an amount equal to the Quantity (expressed as a number) multiplied by the Strike Price per Unit.

If **"Physical Settlement"** is specified to be applicable to the commodity option, it means that the Seller grants to the Buyer the right to cause Seller to either, depending on whether the commodity option is a Put or a Call, purchase or deliver the Quantity on the Settlement Date in return for the Fixed Amount. In those circumstances, for the purpose of Section 8.3 of

the 1993 ISDA Commodity Derivative Definitions, the definition of:

- (a) "Call" is to be taken to mean an Option entitling, but not obligating, the Buyer to purchase from the Seller on the Settlement Date, the Quantity in exchange for the Fixed Amount; and
- (b) "Put" is to be taken to mean an Option entitling, but not obligating, the Buyer to sell to the Seller on the Settlement Date, the Quantity in exchange for the Fixed Amount.

"Quantity" means the quantity (expressed in Units) of the Commodity the subject of the Transaction.

(6) **Physical Settlement**

When "Physical Settlement" is specified to be applicable to a Commodity Transaction, the following provisions apply:

- (a) if the Commodity Transaction requires the delivery of gold or silver, then the gold or silver must comply with the rules of the London Bullion Market Association relating to good delivery and fineness ;
- (b) Section 2(c) of this Agreement is amended by:
 - (i) adding the words "or deliverable" after "payable" in lines 1,6, 8, 10 and 11;
 - (ii) adding the words "or, in the case of delivery obligations, the same commodity" after "in the same currency" in line 2 and 10; and
 - (iii) adding the words "or delivery" after "payment" in line 4; and
 - (iv) adding the words "or deliver" after "pay" in line 8;
- (c) in addition to the representations contained in Section 3 of this Agreement, each party will be deemed to have represented to the other party at the time it delivers any commodity to the other party pursuant to this Agreement, that it has full legal and beneficial title to that commodity and it delivers the same free and clear of any security interest, claim, lien or encumbrance of any kind;
- (d) the definition of "Tax" in Section 14 of this Agreement is amended by adding "or delivery" after "of any payment";
- (e) either party may change the place nominated by it to receive delivery of a Commodity by giving notice to the other party at least five Business Days before the scheduled date for the delivery unless the other party gives timely notice of a reasonable objection to the change. The party nominating the change must pay the other party any additional costs incurred by the other party in changing the place of delivery; and
- (f) subject to the amendments in this Addendum, and to the extent the context does not otherwise require, all other references (if any) in this Agreement to "payment", "payments", "pay", "paid" and "payable" are deemed to include references to "delivery", "deliveries", "deliver", "delivered" and "deliverable", respectively.