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2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement CDS Protocol

1 Background

On 12 March 2009 the International Swaps and Derivatives Association, Inc. (“**ISDA**”) published the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement CDS Protocol (“**Protocol**”). The press release of ISDA announcing the publication of the Protocol (which explains some of the background) is included as schedule 1 to this letter.

Market participants¹ may adhere on or before 7 April 2009 and ISDA has stated that it will not accept adherence letters at a later date (although ISDA retains the right to extend this period or to reopen adherence at a later date).

The primary function of the Protocol is to incorporate the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement Supplement to the 2003 ISDA Credit Derivatives Definitions (“**March 2009 Supplement**”) into the terms of certain specified types of existing (and, for a limited period of time, future and novated) credit derivatives transactions between the adhering parties and provide “Auction Settlement” as the chosen Settlement Method² for most of these transactions. As we comment on the changes made by the March 2009 Supplement in a separate letter to you dated on or about the date of this letter we do not comment on the March 2009 Supplement in this letter.

2 Scope of advice

In this letter we comment on:

- (a) the Protocol;
- (b) the credit derivative transactions affected by the Protocol; and

¹ The Protocol is not limited to members of ISDA.

² Capitalised terms have the meaning they have for the purposes of the Protocol or the March 2009 Supplement. Selected definitions from the Protocol are included in schedule 2 to this advice.

- (c) the changes caused to those transactions by the Protocol.

The Protocol is governed by the laws of New York. Accordingly, we cannot comment on the effect of its terms as a matter of law. However, for the purpose of providing this advice we have assumed that its words will have effect in the manner which they would have if the Protocol were governed by the laws of New South Wales.

3 The Protocol document

The Protocol provides a contractual mechanism by which parties to certain specified types of credit derivative transactions can, by adhering to the Protocol, amend the terms of each of those transactions in a consistent manner. We refer to the types of credit derivative transactions to which the Protocol applies in paragraph 4 and the amendments made to the terms of those transactions in paragraph 5 of this advice.

Market participants may adhere to the Protocol on or before 7 April 2009 by completing and delivering by email an adherence letter to ISDA. By adhering to the Protocol, the adhering party agrees that the terms of each existing Protocol Covered Transaction between it and each other adhering party will be amended with effect from 8 April 2009 or, if the credit derivative transaction has not been entered into at that time, the date on which it is entered into.³ An Adhering Party may not specify additional provisions, conditions or limitations in its adherence letter. Adherence to the protocol is irrevocable.

Although most market participants are likely to be familiar with the Protocol process, there are a few matters particular to the Protocol to which we draw your attention:

- (a) **(representation in relation to Credit Support Documents)** each adhering party provides a range of representations as set out in clause 3 of the Protocol. Whilst the first five of these are based on those contained in the ISDA Master Agreement, the last is not. This representation is that the Protocol, and the amendments contemplated by it, will not, in and of itself, adversely affect any obligations owed, by it or a third party, under any Credit Support Document relating to the relevant ISDA Master Agreement. Also any Credit Support Document between the adhering parties will be taken to be amended to the extent necessary such that its operation is not affected by the adherence of the parties to the Protocol;
- (b) **(waiver)** a provision is included which expressly limits the liability of each Determinations Committee and other persons connected with it;⁴
- (c) **(Determinations Committee may interpret or amend the terms of Protocol)** a provision is included under which each adhering party agrees that a Determinations Committee may resolve (in accordance with the Rules):
- (i) a question of interpretation of the Protocol (including which transactions are covered by it); and

³ See paragraph 4 - transactions which are affected by the Protocol.

⁴ The Determinations Committee is discussed in our separate advice on the March 2009 Supplement.

- (ii) to amend the Protocol in order to correct errors or otherwise give effect to the purpose of the March 2009 Supplement and the Protocol in respect of any Protocol Covered Transaction.

A key point is that the Protocol document and adherence process is similar to that used for previous ISDA protocols.

4 The credit derivative transactions affected by the Protocol

The credit derivative transactions to which the Protocol applies are referred to as the **Protocol Covered Transactions**. A Protocol Covered Transaction is:

- (a) a Credit Derivative Transaction (meaning a credit derivative transaction which incorporates 2003 ISDA Credit Derivatives Definitions);
- (b) which is a Covered Index Transaction, a Covered Swaption Transaction, a Covered Non-Swaption Transaction or a Covered Non-Auction Transaction;⁵
- (c) each of the parties to which has adhered to the Protocol; and
- (d) in respect of which:
 - (i) the Trade Date is before, and the Scheduled Termination Date or the Expiration Date is on or after, 8 April 2009; and
 - (ii) no Event Determination Date⁶, or Early Termination Date has occurred before 8 April 2009.

Also included as Protocol Covered Transactions are transactions which satisfy paragraphs (a), (b) and (c) above, which do not expressly incorporate the March 2009 Supplement and which have a Trade Date on or after 8 April 2009 but on or before 31 January 2011. *This means that some future transactions are caught by the Protocol.*

Also, credit derivative transactions which are novated to be between two adhering parties during the period from and including 8 April 2009 to and including 31 January 2011 are Protocol Covered Transactions if the original transaction would have been a Protocol Covered Transaction if the two original parties had been adhering parties.

However, transactions which fall within the definition of Excluded Transactions are not included as Protocol Covered Transactions. These are:

⁵ The definitions for these are set out in schedule 2. However, most credit derivative transactions would be covered by one of them.

⁶ If a credit derivative transaction relates to more than one Reference Entity and would be a Protocol Covered Transaction but for the inclusion of one or more of those Reference Entities then the remaining portion of that transaction is deemed to be a Protocol Covered Transaction. This could apply if an Event Determination Date has occurred for one of those Reference Entities, for example.

- (a) any **Loan Only Transaction** - meaning “Loan” is specified as the only Deliverable Obligation or the Reference Obligations (which are required to be Loans) and certain other Loans (or Borrowed Money obligations other than Bonds) are the only Deliverable Obligations;
- (b) any **U.S. Muni Transaction** - meaning the Obligation Characteristics include either Full Faith and Credit Obligation Liability, General Fund Obligation Liability, or Revenue Obligation Liability (each as defined in the Additional Provisions for Credit Derivative Transactions - U.S. Municipal Entity as Reference Entity, published by ISDA on September 17, 2004) (including, for the avoidance of doubt, any Credit Derivative Transaction that references the Markit MCDX index);
- (c) any **CDS on ABS Transaction** - meaning any Reference Obligation or Deliverable Obligation is an asset-backed security, mortgage-backed security and/or collateralised debt obligation (including, but not limited to, any collateralised loan obligation, collateralised bond obligation, collateralised synthetic obligation or hybrid thereof);
- (d) any **Excluded Index Transaction** - meaning any back-to-back Credit Derivative Transaction between any two of Citigroup Global Markets Limited, Credit Suisse First Boston International, Deutsche Bank AG, Goldman Sachs International, JP Morgan Chase Bank, Merrill Lynch International, Morgan Stanley Capital Services Inc. and UBS AG London Branch relating to trust certificates linked to any Dow Jones CDX.NA.HY Index or CDX.NA.HY Index; and
- (e) any **Party Agreed Excluded Transaction** - meaning any Credit Derivative Transaction entered into between adhering parties that the adhering parties have agreed by separate bilateral agreement(s) (including for the avoidance of doubt, in the relevant Confirmation(s)) that shall not be Protocol Covered Transactions for the purposes of this Protocol.

A key point is that the Protocol will apply to nearly all credit derivatives transactions between adhering parties which are entered into on or before 31 January 2011 except for those transactions which are excluded by separate agreement between the parties and transactions which meet the definition of loan only transactions, US municipal transactions, CDS on asset backed securities and particular index transactions.

5 The changes to those transactions effected by the Protocol

The Protocol has attached to it 36 parts specifying amendments applicable to particular types of Protocol Covered Transactions. This advice does not aim to describe these in detail. However, there are a number of general amendments applicable to all types of Protocol Covered Transactions set out in the first of these parts. These are:

- (a) **(references to Credit Derivatives Definitions include the March 2009 Supplement)** each reference in the relevant Confirmation to the 2003 ISDA Credit Derivatives Definitions is taken to mean a reference to those definitions as

supplemented by the March 2009 Supplement and the March 2009 Supplement is to prevail to the extent of any inconsistency with the 2003 Definitions.

A key point is that the March 2009 Supplement is incorporated into the Confirmations of all Protocol Covered Transactions.

- (b) **(adjustment of Credit Event Backstop Date and Succession Event Backstop Date)** for all Protocol Covered Transactions other than any Covered Index Transaction, any Covered Swaption Transaction, any New Novation Transaction or any transaction entered into on or after 8 April 2009, the Credit Event Backstop Date and the Succession Event Backstop Date for such events which occur before 20 June 2009 is taken to be the Effective Date.

A key point is that the “look back provisions” do not apply until 20 June 2009 to trades which are already existing on 8 April 2009 and which are of these types.

- (c) **(inclusion of Auction Settlement)** Auction Settlement is taken to be included as the Settlement Method for transactions which are not Covered Non-Auction Transactions and whichever of Physical Settlement or Cash Settlement is currently specified to be the Settlement Method is taken to be the Fallback Settlement Method.

A key point is that Auction Settlement is taken to apply to all transactions covered by the Protocol other than reference obligation only transactions, fixed recovery transactions, preferred CDS transactions or other transactions which the parties have agreed that Auction Settlement will not apply to.

6 Qualifications

Mallesons Stephen Jaques is qualified to advise on the laws of the Commonwealth of Australia, NSW, Victoria, Queensland, Western Australia and the Australian Capital Territory (“**Australian Jurisdictions**”). We express no opinion about the laws of any other jurisdiction. The opinions expressed in this analysis are limited to the laws in force in the Australian Jurisdictions (“**Australian law**”).

We make no comment on:

- (a) taxation issues;
- (b) the enforceability of any particular transaction; or
- (c) legal or regulatory matters which arise in connection with derivatives generally.

This letter is general legal advice only. This analysis is not intended to be an advice or opinion on which market participants can rely in connection with any particular transaction into which it has entered or may enter. This is because the application of any agreement or protocol to a particular transaction ultimately depends on the terms of the transaction and the relevant facts. Accordingly, while every care has been taken in preparing this analysis,

Mallesons Stephen Jaques does not accept responsibility for any losses suffered or liabilities incurred arising from use of this analysis in respect of a particular transaction.

7 Benefit

This opinion is addressed to you personally and may not, without our prior written consent, be:

- (a) relied on by another person;
- (b) disclosed, except to members of the Australian Financial Markets Association, who are subscribing to the Guide and persons who in the ordinary course of your or their business have access to your and their papers and records. Such disclosure is only made on the basis that such persons will make no further disclosure;
- (c) filed with a government or other agency or quoted or referred to in a public document.

This advice is strictly limited to the matters stated in it and does not apply by implication to other matters.

This advice is given in respect of the laws of the Australian Jurisdictions in force at 9.00 am local time on the date of this letter.

Yours faithfully

SCHEDULE 1: ISDA PRESS RELEASE

ISDA®

INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

NEWS RELEASE

For Immediate Release, Thursday, March 12, 2009

For More Information, Please Contact:

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ISDA Launches Hardwiring Supplement and Protocol, Further Enhancing Consistency, Transparency and Liquidity in CDS

New York, Thursday, March 12, 2009 – ISDA today launched its Auction Settlement Supplement and Protocol, the final stage of the process known as ‘hardwiring’, or the incorporation of auction settlement terms into standard CDS documentation.

“This is a major milestone in the ongoing refinement of practices and processes for the efficient, liquid and transparent conduct of the CDS business,” said Robert Pickel, Executive Director and Chief Executive Officer, ISDA. “Hardwiring is central to the many improvements ISDA and the industry are making to the CDS contract to further ensure that infrastructure and standards for transacting these important risk management instruments are straightforward, secure and widely implemented.”

“The industry’s commitment to hardwiring is critical to the success of the project,” said David Geen, General Counsel, ISDA. “In recognizing the benefits hardwiring will bring, we must also recognize the insight, hard work and commitment that both buy-side and sell-side participants and the regulatory community have invested in this process.”

“ISDA welcomes the commendation of these developments by the Senior Supervisors Group in its report, *Observations on Management of Recent Credit Default Swap Credit Events*,” added Mr Pickel. “Supervisory recognition that these efforts will reduce uncertainty and make credit event management more operationally efficient is extremely encouraging.”

Key parts of the process include incorporation into the standard documentation of:

- Auction Settlement provisions that eliminate the need for credit event protocols;
- Resolutions of the Determinations Committees, comprising dealer and buy-side representatives to determine, eg: whether credit events have taken place;
- Credit and Succession Event Backstop Dates that institute a common standard effective date for CDS trades.

In combination with the changes in market practice that support standard coupons for CDS, these developments will introduce greater certainty to transactional, operational and risk considerations for treatment of CDS.

ISDA is engaged in ongoing educational efforts to ensure that all relevant industry participants are fully versed in the benefits and requirements of the process. To listen to a webcast presentation addressing these changes, please follow this link:

<http://secure.webex.com/g2.asp?id=YWM03NZZ>

See also March 2 release announcing timing of hardwiring schedule:

<http://www.isda.org/press/press030209.html>

About ISDA

ISDA, which represents participants in the privately negotiated derivatives industry, is among the world's largest global financial trade associations as measured by number of member firms. ISDA was chartered in 1985, and today has over 820 member institutions from 57 countries on six continents. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

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SCHEDULE 2: Relevant definitions from the Protocol

Affected Reference Entity means, for purposes of this Protocol and in respect of a Credit Derivative Transaction, a Reference Entity, if any, in respect of which an Event Determination Date has occurred prior to the Amendment Effective Date.

Affected Portion means, for purposes of this Protocol and in respect of a Credit Derivative Transaction, the portion, if any, of such Credit Derivative Transaction attributable to an Affected Reference Entity or an Excluded Reference Obligation. Amendment Effective Date means:

- (a) in the case of a Protocol Covered Transaction falling within sub-paragraph (a) of the definition thereof, the Implementation Date;
- (b) in the case of a Protocol Covered Transaction falling within sub-paragraph (b) of the definition thereof, the Trade Date, or Swaption Trade Date, as applicable, of such Credit Derivative Transaction; and
- (c) in the case of a Protocol Covered Transaction falling within sub-paragraph (c) of the definition thereof, the Novation Trade Date.

Bespoke Portfolio Transaction means a Bespoke Tranched Portfolio Transaction or a Bespoke Untranched Portfolio Transaction.

Bespoke Tranched Portfolio Transaction means a tranched Credit Derivative Transaction that references more than one Reference Entity and is not governed by Index Documentation.

Bespoke Untranched Portfolio Transaction means an untranched Credit Derivative Transaction that references more than one Reference Entity and is not governed by Index Documentation.

CDS on ABS Transaction means any Credit Derivative Transaction in respect of which any Reference Obligation or Deliverable Obligation is an asset-backed security, mortgage-backed security and/or collateralized debt obligation (including, but not limited to, any collateralized loan obligation, collateralized bond obligation, collateralized synthetic obligation or hybrid thereof).

CDX Documentation means Documentation referencing a CDX index, published by CDS IndexCo LLC, Markit North America, Inc., or any predecessor or successor thereto, with such modifications to which the parties thereto have agreed.

Confirmation means, in relation to a Protocol Covered Transaction between two Adhering Parties, each document or other confirming evidence (including but not limited to, a transaction supplement) exchanged between the parties or otherwise effective for the purpose of confirming or evidencing the Protocol Covered Transaction.

Constant Maturity Swap Transaction means any Portfolio Constant Maturity Swap Transaction or any Single Name Constant Maturity Swap Transaction.

Covered CDX Tranched Transaction means a tranched Credit Derivative Transaction that references a CDX index and is governed by CDX Documentation.

Covered CDX Untranched Transaction means a Credit Derivative Transaction that is not a Covered CDX Tranched Transaction but that references a CDX index and is governed by CDX Documentation.

Covered Index Transaction means a Covered CDX Tranched Transaction, a Covered CDX Untranched Transaction, a Covered iTraxx® Tranched Transaction or a Covered iTraxx® Untranched Transaction.

Covered iTraxx® Tranching Transaction means a tranching Credit Derivative Transaction that references an iTraxx® index and is governed by iTraxx® Documentation.

Covered iTraxx® Untranching Transaction means a Credit Derivative Transaction that is not a Covered iTraxx® Tranching Transaction but that references an iTraxx® index and is governed by iTraxx® Documentation.

Covered Non-Auction Transaction means any Credit Derivative Transaction that is a Reference Obligation Only Transaction, a Fixed Recovery Transaction, a Preferred CDS Transaction or a Party Agreed Non-Auction Transaction.

Covered Non-Swapping Transaction means any Credit Derivative Transaction that is a Single Name CDS Transaction, a Constant Maturity Swap Transaction, a Principal Only Transaction, an Interest Only Transaction, a First to Default Transaction, an Nth to Default Transaction, a Recovery Lock Transaction or a Bespoke Portfolio Transaction.

Covered Swapping Transaction means any Credit Derivative Transaction that is either a Single Name Swapping or a Portfolio Swapping.

Credit Derivative Transaction means any credit derivative transaction that incorporates the 2003 ISDA Credit Derivatives Definitions.

Documentation means the Governing Master Agreement, Standard Terms Supplement (or master confirmation, general terms confirmation, or any document analogous thereto) and Confirmation (or transaction supplement or any document analogous thereto) relating to a Protocol Covered Transaction as amended, supplemented, varied or modified as at the Amendment Effective Date.

Excluded Index Transaction means any back-to-back Credit Derivative Transaction between any two of Citigroup Global Markets Limited, Credit Suisse First Boston International, Deutsche Bank AG, Goldman Sachs International, JP Morgan Chase Bank, Merrill Lynch International, Morgan Stanley Capital Services Inc. and UBS AG London Branch relating to trust certificates linked to any Dow Jones CDX.NA.HY Index or CDX.NA.HY Index.

Excluded Reference Obligation means any of the following: (a) an Obligation in respect of which the Obligation Characteristics include either Full Faith and Credit Obligation Liability, General Fund Obligation Liability, or Revenue Obligation Liability (each as defined in the Additional Provisions for Credit Derivative Transactions – U.S. Municipal Entity as Reference Entity, published by ISDA on September 17, 2004); (b) an asset-backed security, mortgage-backed security, and/or collateralized debt obligation (including, but not limited to, any collateralized loan obligation, collateralized bond obligation, collateralized synthetic obligation or hybrid thereof); or (c) a trust certificate linked to any Dow Jones CDX.NA.HY Index or CDX.NA.HY Index.

Excluded Transaction means any of the following: (a) a Loan Only Transaction; (b) a U.S. Muni Transaction; (c) a CDS on ABS Transaction; (d) an Excluded Index Transaction; or (e) a Party Agreed Excluded Transaction.

First to Default Transaction means a Credit Derivative Transaction that references more than one Reference Entity pursuant to which Cash Settlement Amounts or Physical Settlement Amounts, as applicable, will only be paid to Buyer after the Conditions to Settlement have been satisfied for the first time in respect of any of the relevant Reference Entities.

Fixed Recovery Transaction means a Credit Derivative Transaction in respect of which the Final Price is pre-determined and specified in the relevant Documentation.

Governing Master Agreement means, in respect of a Protocol Covered Transaction, the ISDA Master Agreement or other form of master agreement governing such Protocol Covered Transaction

and of which such Protocol Covered Transaction forms part, whether executed by the parties thereto or incorporated by reference in the Confirmation relating to such Protocol Covered Transaction.

Implementation Date means April 8, 2009.

Index Documentation means CDX Documentation or iTraxx® Documentation.

Interest Only Transaction means a Credit Derivative Transaction that references more than one Reference Entity under which (a) Seller pays to Buyer either (i) an upfront amount or (ii) a floating interest rate, (b) neither party pays Cash Settlement Amounts during the term of the Transaction and (c) Buyer pays Fixed Amounts to Seller during the term of the Transaction (which Fixed Amounts are reduced due to Credit Events).

ISDA Master Agreement means any of the following: (a) the 2002 ISDA Master Agreement; (b) the 1992 ISDA Master Agreement (Multicurrency – Cross Border); (c) the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction); (d) the 1987 ISDA Interest Rate and Currency Exchange Agreement; and (e) the 1987 ISDA Interest Rate Swap Agreement.

iTraxx® Documentation means Documentation referencing an iTraxx® index published by the International Index Company Limited or any predecessor or successor thereto, with such modifications to which the parties thereto have agreed.

Loan Only Transaction means a Credit Derivative Transaction in respect of which “Loan” is specified as the only Deliverable Obligation Category or a Credit Derivative Transaction pursuant to which the Reference Obligations (which are required to be Loans) and certain other Loans (or Borrowed Money obligations other than Bonds) are the only Deliverable Obligations.

New Novation Transaction means any new Credit Derivative Transaction between a Transferee and a Remaining Party entered into pursuant to a novation transaction (or other agreement) for which the Old Novation Transaction relating thereto would have been a Protocol Covered Transaction set out in sub-paragraphs (a) or (b) of the definition of Protocol Covered Transaction if the Transferor and Remaining Party had each been Adhering Parties.

Novation Trade Date means the date on which a Transferor, Transferee and Remaining Party enter into a novation transaction (or other analogous agreement).

Nth to Default Transaction means a Credit Derivative Transaction that references more than one Reference Entity pursuant to which Cash Settlement Amounts or Physical Settlement Amounts, as applicable, will only be paid to Buyer after the Conditions to Settlement have been satisfied in respect of any of the relevant Reference Entities that is the nth Reference Entity in respect of which an Event Determination Date has occurred, where “n” is the number specified for such purpose in the Documentation in respect of such Credit Derivative Transaction.

Old Novation Transaction means any Credit Derivative Transaction originally entered into between a Transferor and a Remaining Party which is the subject of a novation transaction (or other analogous agreement).

Party Agreed Excluded Transaction has the meaning specified in paragraph 4(f) of this Protocol.

Party Agreed Non-Auction Transaction means any Credit Derivative Transaction that (a) by its terms expressly states that the provisions relating to settlement therein shall not be amended or modified by any Auction Settlement Terms or any documentation in respect of an auction published by ISDA and (b) would, but for such express terms, otherwise be a Protocol Covered Transaction.

Portfolio Constant Maturity Swap Transaction means a Credit Derivative Transaction that references more than one Reference Entity in respect of which the Fixed Rate is reset at the end of

each Fixed Rate Payer Calculation Period to the then-current market rate for the relevant Credit Derivative Transaction.

Portfolio Swaption means any unexercised option to enter into an Underlying CDS (other than another Swaption) that is not an Excluded Transaction and that references more than one Reference Entity.

Preferred CDS Transaction means a Credit Derivative Transaction that references preferred securities or similar hybrid securities as Reference Obligations or Deliverable Obligations and which contains specific provisions pertaining thereto.

Principal Only Transaction means a Credit Derivative Transaction that references more than one Reference Entity under which Seller pays an upfront amount to Buyer, neither party pays any Fixed Amounts or Cash Settlement Amounts during the term of the Credit Derivative Transaction and, upon termination of the Credit Derivative Transaction, Buyer pays to Seller the notional amount of the Credit Derivative Transaction, minus aggregate Cash Settlement Amounts.

Protocol Covered Transaction means:

- (a) any Credit Derivative Transaction that is a Covered Index Transaction, a Covered Swaption Transaction, a Covered Non-Swaption Transaction, or a Covered Non-Auction Transaction in respect of which:
 - (i) each of the parties is an Adhering Party;
 - (ii) the Trade Date or, in respect of a Covered Swaption Transaction, the Swaption Trade Date, is prior to the Implementation Date;
 - (iii) the Scheduled Termination Date or, in respect of a Covered Swaption Transaction, the Expiration Date (as defined in such Covered Swaption Transaction), is on or after the Implementation Date;
 - (iv) no Event Determination Date (as defined in the Documentation relating to such Credit Derivative Transaction) has occurred prior to the Implementation Date; and (v) no Early Termination Date (as defined in the Governing Master Agreement relating to such Credit Derivative Transaction, or in the case of a Governing Master Agreement which is not an ISDA Master Agreement, any event analogous thereto) in respect of the relevant Credit Derivative Transaction has occurred under the Governing Master Agreement prior to the Implementation Date; or
- (b) any Credit Derivative Transaction that is a Covered Index Transaction, a Covered Swaption Transaction, a Covered Non-Swaption Transaction, or a Covered Non-Auction Transaction in respect of which:
 - (i) the related Documentation (without reference to any amendments applicable pursuant to this Protocol) does not incorporate the March 2009 Supplement;
 - (ii) each of the parties is an Adhering Party; and
 - (iii) the Trade Date or, in respect of a Covered Swaption Transaction, the Swaption Trade Date, is on or after the Implementation Date but on or before January 31, 2011;
- (c) a New Novation Transaction which does not otherwise fall within (a) or (b) above and in respect of which:

- (i) the related Documentation (without reference to any amendments applicable pursuant to this Protocol) does not incorporate the March 2009 Supplement;
- (ii) each of the Remaining Party and the Transferee is an Adhering Party; and
- (iii) the Novation Trade Date is on or after the Implementation Date and on or prior to January 31, 2011;

provided that (A) subject to clause (B) below, any Transaction that is an Excluded Transaction shall not be a Protocol Covered Transaction and (B) in respect of any Credit Derivative Transaction that relates to more than one Reference Entity and that would otherwise be a Protocol Covered Transaction but for the inclusion of any Affected Portion therein, such Affected Portion shall be excluded for purposes of this Protocol and the remaining portion of such Credit Derivative Transaction shall be deemed to be a Protocol Covered Transaction.

Recovery Lock Transaction means a Credit Derivative Transaction in respect of which the Reference Price is specified in the relevant Documentation as a price less than 100 per cent. and for which either Buyer or Seller can deliver a Notice of Physical Settlement.

Reference Obligation Only Transaction means:

- (a) a Credit Derivative Transaction in respect of which the applicable Settlement Method is Physical Settlement and “Reference Obligations Only” is specified as the Deliverable Obligation Category; or
- (b) a Credit Derivative Transaction in respect of which the applicable Settlement Method is Cash Settlement and the relevant Confirmation specifies only one or more specifically identified Reference Obligations.

Remaining Party means a party which consents to a Transferor’s transfer by novation and the acceptance thereof by a Transferee of all of such Transferor’s rights, liabilities, duties and obligations under and in respect of the novated amount of a Credit Derivative Transaction that is originally between it and such Transferor.

Single Name CDS Transaction means a Credit Derivative Transaction that references not more than one Reference Entity that is not a Single Name Constant Maturity Swap Transaction.

Single Name Constant Maturity Swap Transaction means a Credit Derivative Transaction that references not more than one Reference Entity for which the Fixed Rate is reset at the end of each Fixed Rate Payer Calculation Period to the then-current market rate for the relevant Credit Derivative Transaction.

Single Name Swaption means any unexercised option to enter into an Underlying CDS (other than another Swaption) that is not an Excluded Transaction and that references not more than one Reference Entity.

Standard Terms Supplement means, in relation to a Protocol Covered Transaction between two Adhering Parties, the standard terms supplement published by ISDA, Markit Group Limited, International Index Company Limited, CDS IndexCo LLC, any analogous institution or any successor or predecessor thereto and incorporated by reference into the relevant Confirmation.

Swaption means an option to enter into an Underlying CDS that references one, or more than one Reference Entity.

Transferee means a party which accepts by way of novation from a Transferor all of such Transferor's rights, liabilities, duties and obligations under and in respect of the novated amount of a Credit Derivative Transaction that is originally between such Transferor and a Remaining Party.

Transferor means a party which transfers by way of novation to a Transferee all of such party's rights, liabilities, duties and obligations under and in respect of the novated amount of a Credit Derivative Transaction that is originally between such party and a Remaining Party.

Underlying CDS means, in respect of a Single Name Swaption or Portfolio Swaption, the underlying Credit Derivative Transaction to which the relevant unexercised option relates.

U.S. Muni Transaction means any Credit Derivative Transaction in respect of which the Obligation Characteristics include either Full Faith and Credit Obligation Liability, General Fund Obligation Liability, or Revenue Obligation Liability (each as defined in the Additional Provisions for Credit Derivative Transactions – U.S. Municipal Entity as Reference Entity, published by ISDA on September 17, 2004) (including, for the avoidance of doubt, any Credit Derivative Transaction that references the Markit MCDX index).