ISDA ISSUES 2014 CREDIT DERIVATIVES DEFINITIONS AND RELATED PROTOCOL

September 2014

The International Swaps and Derivatives Association ("ISDA"), the trade group for the over-the-counter derivatives industry, has issued the 2014 Credit Derivatives Definitions (the "2014 Definitions") which are expected to govern credit derivative trades starting on September 22, 2014. The 2014 Definitions reflect numerous changes to the 2003 Credit Derivative Definitions (the "2003 Definitions") which currently govern credit derivative trades. ISDA has issued a Protocol for those parties wishing to apply the 2014 Definitions to trades entered into prior to September 22, 2014 and to certain trades entered into afterwards. The Protocol will be open until September 12, 2014. The Protocol contains certain exceptions and therefore will not apply to all pre-September 22, 2014 transactions. As noted further below, some significant changes effected by the 2014 Definitions will not be applied in the Protocol. Please note that starting September 22, 2014, the 2014 Definitions will not apply automatically, but will need to be specified in confirms or other trade documentation. ISDA has prepared a new draft Credit Derivatives Physical Settlement Matrix (the "Matrix"), which should be available **September 22, 2014**, which sets forth which categories of trades are affected by certain major changes made by the 2014 Definitions (please note that the draft Matrix is subject to change).

Among the highlights of the changes made by the 2014 Definitions are: (i) the introduction of a new Credit Event, "Governmental Intervention"; (ii) the introduction of the concept of "Asset Package Delivery" which will provide that certain assets can be used for physical delivery even if they do not otherwise meet the Deliverable Obligation criteria; (iii) providing for CDS trades on Financial Reference Entities to be determined by senior or subordinated obligations; (iv) the further standardization of trade terms by providing Standard Reference Obligations for credit default swap ("CDS") trades; (v) specific provisions to deal with euro exit and currency redenomination; (vi) certain changes to facilitate Successor situations; and (vii) effecting certain changes to Restructuring Credit Events. As discussed below, and as provided in the Matrix, some of these changes will apply only to certain transactions in certain regions.

- The 2014 Definitions introduce "Governmental Intervention" as a distinct Credit Event (i.e. an event that triggers the settlement of a CDS contract) to address government "bail-ins" of banks. This event will occur where pursuant to an action or announcement of a Governmental Authority as a result of restructuring and resolution law or regulation (or any similar law or regulation) which is

binding with respect to the Reference Entity, there is a reduction or postponement of principal or interest or further subordination of Obligations, or expropriation, transfer or other event which changes the ownership of Obligations or provides for the mandatory cancellation, conversion or exchange of Obligations. This Credit Event will affect financial Reference Entities and is distinct from the Restructuring Credit Event. Unlike Restructuring, it does not need to result from a deterioration in the credit of the Reference Entity or need to satisfy the Multiple Holder Obligation, if applicable. This new Credit Event will not be applied by the Protocol. It will apply on and after September 22, 2014 to trades involving financials in Western Europe, Australia, New Zealand and Asia if "Financial Reference Entity Terms" are selected as applicable in accordance with the Matrix.

- A concern under the 2003 Definitions is that after certain Restructuring Events, there may be no remaining Deliverable Obligations which could lead to a Credit Event where a protection buyer has an "orphan" contract. Under the 2014 Definitions, Asset Package Delivery will apply if selected to situations involving financial Reference Entities or Sovereign Reference Entities and where Governmental Intervention (in the case of Financial Reference Entities) or Restructuring are applicable Credit Events. In those situations Asset Packages (assets delivered in exchanges for Obligations that were previously Deliverable Obligations, or in the case of Sovereigns, were designated bonds called "Package Observable Bonds"), can be delivered to physically settle CDS trades. Asset Package Delivery will not be applied by the Protocol, but from September 22nd will apply through the Matrix, to Sovereigns in Western Europe, Japan, Australia and New Zealand.

- The 2014 Definitions will allow CDS trades for financial Reference Entities to a senior or subordinated level (if "Financial Reference Entity Terms" is selected, bifurcated so as to apply in applicable regions, i.e. Western Europe, Australia, New Zealand and Asia). The distinction will have a bearing on Governmental Intervention, Restructuring Credit Events and Succession Events. When such a Credit Event or Succession Event occurs in respect of subordinated debt, the protection on subordinated CDS (i.e. where the Reference Obligation is subordinated debt) will be triggered but not the protection on senior CDS (i.e. where the Reference Obligation is senior debt).

- Under the 2003 Definitions, parties to a CDS trade select a Reference Obligation for the trade in the relevant confirm which could in practice lead to different contracts, and therefore less standardization. To further standardization of trade terms (and thus improve the matching of trades), the 2014 Definitions provide for a Standard Reference Obligation for a Reference Entity that will be a default choice. The Standard Reference Obligations for different Reference Entities will be published by Markit on an "SRO List."

- Under the 2014 Definitions, in the case where a Sovereign leaves the euro, the exit will not be a Credit Event if there is a freely available market rate of conversion between the euro and the new currency, and there is no reduction in the rate or amount of interest, principal or premium payable, as determined by such market rate of conversion. In other cases where the currency of payment for obligations is changed, there will be a Credit Event unless the new currency is one of a specified list (i.e. lawful currency of the U.S., the UK, the euro, Japan, etc.).

- Under the 2003 Definitions, in order for there to be a Successor to a Reference Entity (and thus a corresponding adjustment in the terms of a CDS trade), there must be a Succession Event (i.e. a corporate event such as a merger, consolidation, amalgamation, transfer of assets or liabilities) relating to the transfer of Relevant Obligations from a Reference Entity to a potential Successor. The 2014 Definitions eliminate this requirement, and include scenarios where Relevant Obligations are transferred to a potential Successor in a series of steps (a "Steps Plan"). In the case where there is a potential Successor due to a Steps Plan, in calculating the percentages used to determine whether an entity qualifies as a Successor, the calculating party will consider all related successions in respect of such Steps Plan in the aggregate as if forming part of a single succession.

- Under the 2003 Definitions, there is a 90 day look back limit to the determination of a Successor to a Reference Entity (i.e. the date triggering the Successor determination must occur not more than 90 days prior to the time it is raised with the relevant ISDA Determinations Committee). The 2014 Definitions introduce the concept of a Universal Successor (where an entity assumes all obligations (including at least one Relevant Obligation) of a Reference Entity which is not a Sovereign, the Reference Entity does not issue or assume or incur obligations for Borrowed Money after such assumption, and the Reference Entity ceases to exist or is in the process of dissolution). Where there is a Universal Successor, the 90 day look back limit does not apply (although the Succession Event must occur after January 1, 2014).

- The 2014 Definitions have amended the Restructuring Credit Event so that it includes a bond exchange affecting all of a series of bonds, in which case the terms of the new bonds are compared to the terms of the old bonds to determine if a Restructuring Credit Event has occurred. Under the 2003 Definitions, whether a bond exchange could constitute a Restructuring Credit Event was unclear. Restructuring can also involve currency redenominations, including a euro exit (as discussed above).

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