

Determinations Committees Decision

Date:	October 20, 2015
Determinations Committee:	Americas / EMEA / Asia Ex-Japan / Japan / Australia & New Zealand
Meeting Date:	October 20, 2015

Question for vote:	<p>1. Do you agree that the following is the correct interpretation of the definition of Protocol Covered Transaction as set out in paragraph 4 of the ISDA 2014 Credit Derivatives Definitions Protocol (the Protocol)?</p> <p>With respect to sub-paragraph (a)(iv) of the definition of Protocol Covered Transaction (pursuant to which a Credit Derivative Transaction in respect of which an Event Determination Date has occurred prior to the Implementation Date is excluded for the purposes of the Protocol) and any Credit Derivative Transaction that references more than one Reference Entity, notwithstanding any other provision of the definition of Protocol Covered Transaction, only the portion, if any, of such Credit Derivative Transaction attributable to a Reference Entity in respect of which an Event Determination Date has occurred prior to the Implementation Date shall be excluded for purposes of the Protocol by virtue of sub-paragraph (a)(iv) of such definition, with the effect that the remaining portion of such Credit Derivative Transaction is capable of constituting a Protocol Covered Transaction.</p>				
Vote result:	Yes				
Determinations Committee DC Voting Member	Americas	EMEA	Asia Ex-Japan	Japan	Australia and New Zealand
AllianceBernstein L.P.	Yes	Yes	Yes	Yes	Yes
Bank of America, N.A	Yes	Yes	Yes	Yes	Yes
Barclays Bank plc	Yes	Yes	Yes	Yes	Yes
BNP Paribas	Yes	Yes	Yes	Yes	Yes
Citadel LLC	Yes	Yes	Yes	Yes	Yes
Citibank, N.A.	Yes	Yes	Yes	Yes	Yes
Credit Suisse International	Yes	Yes	Yes	Yes	Yes
Deutsche Bank AG	Yes	Yes	Yes	Yes	Yes
Eaton Vance Management	Yes	Yes	Yes	Yes	Yes
Elliot Management Corporation	Yes	Yes	Yes	Yes	Yes
Goldman Sachs International	Yes	Yes	Yes	Yes	Yes
JP Morgan Chase Bank, N.A.	Yes	Yes	Yes	Yes	Yes
Morgan Stanley & Co. International plc	Yes	Yes	Yes	Yes	Yes
Nomura International plc	Yes	Yes	Yes	Yes	Yes
Pacific Investment Management Co., LLC	Yes	Yes	Yes	Yes	Yes

Question for vote:	2. Do you approve the attached amendments to the Protocol and the Restricted Delivery Party Additional Provisions?				
Vote result:	Yes				
Determinations Committee DC Voting Member	Americas	EMEA	Asia Ex-Japan	Japan	Australia and New Zealand
AllianceBernstein L.P.	Yes	Yes	Yes	Yes	Yes
Bank of America, N.A	Yes	Yes	Yes	Yes	Yes
Barclays Bank plc	Yes	Yes	Yes	Yes	Yes
BNP Paribas	Yes	Yes	Yes	Yes	Yes
Citadel LLC	Yes	Yes	Yes	Yes	Yes
Citibank, N.A.	Yes	Yes	Yes	Yes	Yes
Credit Suisse International	Yes	Yes	Yes	Yes	Yes
Deutsche Bank AG	Yes	Yes	Yes	Yes	Yes
Eaton Vance Management	Yes	Yes	Yes	Yes	Yes
Elliot Management Corporation	Yes	Yes	Yes	Yes	Yes
Goldman Sachs International	Yes	Yes	Yes	Yes	Yes
JP Morgan Chase Bank, N.A.	Yes	Yes	Yes	Yes	Yes
Morgan Stanley & Co. International plc	Yes	Yes	Yes	Yes	Yes
Nomura International plc	Yes	Yes	Yes	Yes	Yes
Pacific Investment Management Co., LLC	Yes	Yes	Yes	Yes	Yes

Additional Provisions relating to Credit Derivative Transactions entered into between a Restricted Delivery Party and a Market Counterparty where Physical Settlement applies¹

(published on 25 June 2013)

1. For purposes of these Additional Provisions:

“Delivery Restriction Notice” means an irrevocable notice from the Restricted Delivery Party (which shall be in writing (including by facsimile and/or email)) to the Market Counterparty in accordance with paragraph 4 below. A Delivery Restriction Notice shall be subject to the requirements regarding notices set forth in Section 1.38 of the Credit Derivatives Definitions. A form of Delivery Restriction Notice is set forth in the Exhibit to these Additional Provisions;

“Market Counterparty” means the party to the Credit Derivative Transaction that is not the Restricted Delivery Party;

“Restricted Delivery Party” means the party to the Credit Derivative Transaction that is a UCITS Fund (or that is otherwise agreed by the parties to constitute a “Restricted Delivery Party” for the purposes of these Additional Provisions);

“Restriction” means any provision of the relevant laws and regulations applicable to the Restricted Delivery Party, including any applicable investment ratios, that would be breached by the Restricted Delivery Party taking Delivery of any Bond (or the full Outstanding Principal Balance of a Bond) specified in a Notice of Physical Settlement or a NOPS Amendment Notice, as applicable; and

“UCITS Fund” means:

(a) an undertaking and/or a collective investment scheme which has or requires authorisation in accordance with, and pursuant to applicable laws implementing article 5 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (recast) (the “Directive”) or any successor regulation thereto; or

(b) if the undertaking and/or collective investment scheme described in (a) above has no legal personality, the trustee or other person which, acting in respect of such

¹ The “Additional Provisions relating to Credit Derivative Transactions entered into between a Restricted Delivery Party and a Market Counterparty where Physical Settlement applies”, published on 25 June 2013, (these “Additional Provisions”) may be incorporated into a relevant confirmation (including in electronic form) by wording indicating that the Additional Provisions are so incorporated by reference therein. These Additional Provisions have been prepared for use with Credit Derivatives Transactions that incorporate the 2003 ISDA Credit Derivatives Definitions as supplemented by the 2009 ISDA Credit Derivatives Determinations Committees, Auction Supplement and Restructuring Supplement published on 14 July 2009.

undertaking and/or collective investment scheme, is party as principal to the Credit Derivative Transaction,

provided that in each case, if the undertaking and/or collective investment scheme has more than one investment compartment (within the meaning of the Directive), “UCITS Fund” shall include reference to the undertaking and/or collective investment scheme or person, as applicable, acting solely in respect of an investment compartment of that undertaking and/or collective investment scheme.

2. If Buyer specifies a Loan in a Notice of Physical Settlement or NOPS Amendment Notice, as applicable, then, notwithstanding anything to the contrary in the Credit Derivatives Definitions, such Loan shall be deemed to constitute an “Undeliverable Obligation” for the purposes of Sections 9.1 and 9.6 (as amended below) of the Credit Derivatives Definitions with effect from the day on which the relevant Notice of Physical Settlement or NOPS Amendment Notice, as applicable, is effectively delivered by Buyer to Seller.

3. In any such Notice of Physical Settlement or NOPS Amendment Notice, as applicable, Buyer agrees that it may only specify an Outstanding Principal Balance in respect of the relevant Loan which is greater than the minimum transfer amount and in an integral multiple (in each case, howsoever defined) applicable to such Loan in the relevant loan documentation.

4. If Seller is the Restricted Delivery Party and Seller determines acting in good faith and in a commercially reasonable manner that by reason of any Restriction it is precluded from taking Delivery of all or part of the Outstanding Principal Balance of any Bond specified in a Notice of Physical Settlement or NOPS Amendment Notice delivered by Buyer, then Seller may deliver a Delivery Restriction Notice to Buyer within three Business Days of Delivery of such Notice of Physical Settlement or NOPS Amendment Notice, representing to Buyer that it is so precluded. If Seller is able to take Delivery of an amount greater than zero but less than the full Outstanding Principal Balance of any such Bond, then Seller shall specify in the Delivery Restriction Notice the Outstanding Principal Balance of each such Bond of which it is able to take Delivery (the “Delivery Amount”).

Settlement of each Delivery Amount shall be effected in accordance with Section 8.1 of the Credit Derivatives Definitions. With effect from the date such Delivery Restriction Notice is effectively delivered by Seller to Buyer, an amount of each Bond specified in such Delivery Restriction Notice equal to the Outstanding Principal Balance of each such Bond specified in the relevant Notice of Physical Settlement or NOPS Amendment Notice, as applicable, minus the Delivery Amount (if any) in respect of each such Bond (each such amount, the “Remaining Amount”), shall be deemed to constitute an “Undeliverable Obligation” for the purposes of Sections 9.1 and 9.6 (as amended below) of the Credit Derivatives Definitions, provided, however, that if the Remaining Amount in respect of a Bond is less than USD 1,000,000 (or its equivalent in the relevant Obligation Currency) it shall be deemed to be increased to an amount equal to USD 1,000,000 (or its equivalent in the relevant Obligation Currency) and the Delivery Amount in respect of such Bond shall be deemed to be reduced by an amount equal to such increase.

5. For the avoidance of doubt, the amendments set out in paragraphs 6 to 11 of these Additional Provisions shall only apply in respect of the Outstanding Principal Balance of a Bond or Loan that is deemed to constitute an “Undeliverable Obligation” for purposes of Sections 9.1 and 9.6 of the Credit Derivatives Definitions pursuant to paragraphs 2 or 4 of these Additional Provisions.

6. Section 9.6(d) of the Credit Derivatives Definitions is amended by the deletion of the words “is deemed to be the date that is two Business Days after the Latest Permissible Physical Settlement Date” and the substitution of the following words therefor:

“means the 100th Business Day following ~~(i) if an Event Determination Date has occurred pursuant to Section 1.16(a) of the Credit Derivatives Definitions or 14.1(a) of the Credit Derivatives Definition~~ the NOPS Cut-off Date, ~~such Event Determination Date or (ii) if an Event Determination Date has occurred pursuant to Section 1.16(b) of the Credit Derivatives Definitions or 14.1(b) of the Credit Derivatives Definitions, the later of the relevant DC Credit Event Determination Announcement and any Credit Event Notice,~~ or any earlier Business Day selected by the Market Counterparty in its sole and absolute discretion, provided that, for the avoidance of doubt, the Settlement Suspension provisions of Section 10.1 of the Credit Derivatives Definitions shall apply to such time limit”.

7. Section 9.6(h) of the Credit Derivatives Definitions is amended by the deletion of the words “there shall be no “Minimum Quotation Amount”” and the substitution of the following words therefor:

““Minimum Quotation Amount” means the lower of (a) the Quotation Amount and (b) USD 1,000,000 (or its equivalent in the relevant Obligation Currency)”.

8. If the Market Counterparty is Buyer, then Section 9.6(e) of the Credit Derivatives Definitions is amended by the deletion of the words “unless fewer than two Full Quotations are obtained or a Weighted Average Quotation applies (or, if applicable, Indicative Quotations), in which case, “Valuation Method” is deemed to be Market”.

9. If Market Counterparty is Seller, then the following amendments to Section 9.6 of the Credit Derivatives Definitions shall apply:

(a) Section 9.6(e) of the Credit Derivatives Definitions is amended by the deletion of the words “is deemed to be Highest unless fewer than two Full Quotations are obtained or a Weighted Average Quotation applies (or, if applicable, Indicative Quotations), in which case, “Valuation Method” is deemed to be Market” and the substitution of the following words therefor:

“is deemed to be “Lowest” (for which purposes “Lowest” shall mean the lowest Quotation obtained in accordance with Section 9.6 (as amended hereby))”; and

(b) Section 9.6(f) of the Credit Derivatives Definitions is amended by the deletion of the word “Bid” and the substitution of the word “Offer” therefor.

10. The opening paragraph of Section 9.6(k) and Sections 9.6(k)(i) and (ii) of the Credit Derivatives Definitions shall be deleted and replaced with the following:

““Quotation” means each Full Quotation and the Weighted Average Quotation obtained and expressed as a percentage of the Reference Obligation’s Outstanding Principal Balance or Due and Payable Amounts as applicable, with respect to a Valuation Date in the manner that follows:

(i) The Calculation Agent shall attempt to obtain Full Quotations with respect to each Valuation Date from the Selected Dealers. If the Calculation Agent is unable to obtain at least two such Full Quotations from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)) on the same Business Day within three Business Days of a Valuation Date, then on the next following Business Day (and, if necessary, on each Business Day thereafter until the tenth Business Day following the relevant Valuation Date) the Calculation Agent shall attempt to obtain Full Quotations from the Selected Dealers and, if at least two Full Quotations are not available from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)), a Weighted Average Quotation.

(ii) If the Calculation Agent is a party to the Credit Derivative Transaction and is unable to obtain at least two Full Quotations from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)) or a Weighted Average Quotation on the same Business Day on or prior to the tenth Business Day following the applicable Valuation Date, then the party that is not the Calculation Agent may attempt to obtain Full Quotations from the Selected Dealers and, if at least two Full Quotations are not available from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)), a Weighted Average Quotation. If such party is able to obtain at least two Full Quotations from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)) or a Weighted Average Quotation on the same Business Day within an additional five Business Days, the Calculation Agent shall use such Full Quotations or Weighted Average Quotation to determine the Final Price in accordance with the specified Valuation Method. If such party is unable to obtain at least two Full Quotations from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)) or a Weighted Average Quotation on the same Business Day within such additional five Business Days, the Quotations shall be deemed to be any Full Quotation obtained from a Selected Dealer (which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)) at the Valuation Time on such fifth Business Day, or, if no such Full Quotation is obtained, the weighted average of any firm quotations for the Undeliverable Obligation obtained from the Selected Dealers at the Valuation Time on such fifth Business Day with respect to the aggregate portion of the Quotation Amount for which such quotations were obtained and a quotation deemed to be either (A) if Market Counterparty is Buyer, zero or (B) if Market Counterparty is Seller, 100 per cent for the balance of the Quotation Amount for which firm quotations were not obtained on such day.

(iii) If the Calculation Agent is a third party and is unable to obtain at least two Full Quotations from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)) or a Weighted Average Quotation on the same Business Day on or prior to the tenth Business Day following the applicable Valuation Date, Buyer and Seller each may attempt to obtain Full Quotations from the Selected Dealers and, if at least two Full Quotations are not available from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)), a Weighted Average Quotation. If either or both parties is (or are) able to obtain between them at least two Full Quotations from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)) or a Weighted Average Quotation on the same Business Day within an additional five Business Days, the Calculation Agent shall use all such Full Quotations or Weighted Average Quotations to determine the Final Price in accordance with the specified Valuation Method. If the parties are unable to obtain between them at least two Full Quotations from the Selected Dealers (at least one of which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)) or a Weighted Average Quotation on the same Business Day within such additional five Business Days, the Quotations shall be deemed to be any Full Quotation obtained from a Selected Dealer (which must be from an entity other than the Market Counterparty or an Affiliate thereof (if applicable)) at the Valuation Time on such fifth Business Day, or, if no such Full Quotation is obtained, the weighted average of any firm quotations for the Undeliverable Obligation obtained from the Selected Dealers at the Valuation Time on such fifth Business Day with respect to the aggregate portion of the Quotation Amount for which such quotations were obtained and a quotation deemed to be either (A) if Market Counterparty is Buyer, zero or (B) if Market Counterparty is Seller, 100 per cent for the balance of the Quotation Amount for which firm quotations were not obtained on such day.

Sections 9.6(k)(iii) of the Credit Derivatives Definitions shall be renumbered accordingly.

11. For the purposes only of Section 9.6(k) of the Credit Derivatives Definitions (as amended hereby):

(a) any firm quotations obtained as part of a Full Quotation, a Weighted Average Quotation or otherwise must, notwithstanding anything to the contrary in the Credit Derivatives Definitions (and in addition to any other requirements set forth in the Credit Derivatives Definitions):

(i) be capable of acceptance by the Market Counterparty and be open for acceptance by the Market Counterparty for at least 30 minutes after each such firm quotation has been communicated to it by the party sourcing such firm quotation; and

(ii) be for a transaction with the Market Counterparty which shall be governed by documentation that is consistent with market practice applicable to the sale and purchase of the relevant Undeliverable Obligation on the Valuation Date or on such later date as may be applicable, including, without

limitation, a representation that the relevant Selected Dealer has completed all “know your customer” or similar requirements under all applicable laws, regulations and internal compliance procedures relating to a transaction with the Market Counterparty in respect of such Undeliverable Obligation,

provided that all such requirements shall be deemed automatically satisfied in respect of quotations provided by the Market Counterparty or any Affiliate thereof when acting as a Selected Dealer;

(b) Sections 7.9, 7.10, 7.11 of the Credit Derivatives Definitions shall be deemed amended by replacing the word “Dealer” in each place where it appears with the words “Selected Dealer” in each case in the singular or plural as applicable; and

(c) Section 7.15 of the Credit Derivatives Definitions shall be deemed deleted in its entirety and replaced with the following:

“Section 7.15. Selected Dealers. “Selected Dealers” means, with respect to a day on which Quotations are to be obtained, five or more dealers in obligations of the type of Reference Obligations for which Quotations are to be obtained. The Selected Dealers will be selected as follows:

(a) the Restricted Delivery Party may select up to two institutions as Selected Dealers provided that:

(i) the Restricted Delivery Party has notified the Calculation Agent (and, if the Market Counterparty is not the Calculation Agent, the Market Counterparty) of its selections as soon as possible prior to (but, in any event, by no later than one hour prior to) the Valuation Time on the day on which Quotations are to be obtained; and

(ii) if the Restricted Delivery Party selects as a Selected Dealer any institution that is not an Approved Dealer, such selection is subject to the consent of the Market Counterparty;

(b) the Market Counterparty will select all other Selected Dealers in its sole and absolute discretion, such selections to be notified to the Calculation Agent (and, if the Restricted Delivery Party is permitted to obtain Quotations on such day, the Restricted Delivery Party) by no later than the Valuation Time on the day on which Quotations are to be obtained, provided that:

(i) the Market Counterparty shall, if it considers it to be reasonably practicable, consult with the Restricted Delivery Party if it proposes to select as a Selected Dealer any institution that is not an Approved Dealer;

(ii) the Market Counterparty may select itself or any Affiliate as a Selected Dealer without any consultation with the Restricted Delivery Party;

(iii) the Market Counterparty is permitted to deselect any institution as a Selected Dealer prior to the Valuation Time on the day on which Quotations are to be obtained if it has internal credit or other policy reasons for doing so, and shall notify the Restricted Delivery Party as soon as practicable of such deselection.

For the avoidance of doubt, if the Final Price cannot be determined with respect to a particular day and Quotations are to be obtained on any subsequent day, the Selected Dealers with respect to each such subsequent day will be selected by each party to the Credit Derivative Transaction in accordance with the above definition of Selected Dealers.

For the purposes of this Section 7.15, “Approved Dealer” means the entity or entities, if any, as agreed between the parties.”

12. For the avoidance of doubt, these Additional Provisions shall only apply to any Credit Derivatives Transactions between the Market Counterparty and the Restricted Delivery Party, and shall not apply following any novation or assignment of any Credit Derivatives Transaction unless agreed by the transferee and remaining party thereto.

13. These Additional Provisions are supplemented by the Further Additional Provisions relating to Credit Derivative Transactions entered into between a Restricted Delivery Party and a Market Counterparty where Physical Settlement applies as published by ISDA on 8 September 2014.

Exhibit – Form of Delivery Restriction Notice

[Date]

[Counterparty Address and
Contact Information]

[Non-party Calculation Agent Address
and Contact Information]

DELIVERY RESTRICTION NOTICE

Credit Derivative Transaction Details: [Trade Date], [Effective Date],
[Reference Entity] [Index]

Reference is made to the Credit Derivative Transaction described above (the “Transaction”) between [], as Seller, and [], as Buyer and the [Notice of Physical Settlement] [NOPS Amendment Notice] delivered pursuant to the Transaction on [] (the “Relevant Notice”). Capitalized terms used and not otherwise defined in this letter shall have the meanings given them in the confirmation of the Transaction.

This letter is our Delivery Restriction Notice to you. We hereby represent that by reason of a Restriction, we are precluded from taking Delivery of all or part of the Outstanding Principal Balance of the Bonds listed below that were specified in the Relevant Notice, except to the extent of the Delivery Amount specified for each such Bond below, if any:

[Description of Bond, including the Delivery Amount, if any]

Nothing in this letter shall be construed as a waiver of any rights we may have with respect to the Transaction.

Sincerely,

[insert name]

Name:
Title: