

UPDATE 25

2 April 2009

3.4 Credit Derivatives

[U25.01] Legal opinion on March 2009 Supplement

Mallesons Stephen Jaques has issued a new opinion on the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement Supplement (“**March 2009 Supplement**”) to the 2003 ISDA Credit Derivatives Definitions (“**2003 Definitions**”) published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”). This advice replaces the opinion issued by Mallesons Stephen Jaques on credit derivatives documentation dated 19 June 2003.

The March 2009 Supplement effects some fundamental changes to the way in which Credit Derivative Transactions operate.

After 8 April 2009, ISDA intends that parties should incorporate the March 2009 Supplement into all future Credit Derivative Transactions unless the parties specify otherwise in their documentation.

The March 2009 Supplement implements five main concepts:

- (a) adds Auction Settlement as a new Settlement Method;
- (b) establishes the Credit Derivatives Determinations Committees and incorporates the Resolutions of each Credit Derivatives Determinations Committee into the Credit Derivatives Definitions;
- (c) creates Credit Event Backstop Dates and Succession Event Backstop Dates;
- (d) changes to the determination of the currency exchange rate for Physical Settlement; and
- (e) compression of the settlement process for (i) Loan Deliverable Obligations and (ii) physical settlement of Auction RASTs, Customer Buy RASTs and Customer Sell RASTs resulting from an Auction.

Parties to existing or legacy Credit Derivative Transactions which incorporate the 2003 Definitions can amend those existing Transactions to incorporate the March 2009 Supplement by adhering to the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement CDS Protocol (the “**Protocol**”) in respect of which Mallesons Stephen Jaques have issued a separate opinion, which is referred to at [U25.02] below.

The updated opinion has been inserted in [3.4.1].

[U25.02] Legal advice on Big Bang Protocol

Mallesons Stephen Jaques has issued an opinion with respect to the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement CDS Protocol, which was published by ISDA on 12 March 2009. Market participants may adhere to the Protocol 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 March 2009 Supplement to the 2003 ISDA Credit Derivatives Definitions into the terms of certain specified types of existing (and, for a limited period of time, future) Credit Derivatives Transactions between the Adhering Parties and provide “Auction Settlement” as the chosen Settlement Method for most of these transactions.

The advice has been inserted in [3.4.2].

The ISDA Protocol will be open until 7 April 2009.

[U25.03] Link to ISDA website

Material on auction hardwiring can be found [<here>](#)