

UPDATE 27

May 2009

[U27] 2009 ISDA® Close-out Amount Protocol

Mallesons Stephen Jaques has issued a letter of advice on the 2009 ISDA Close-out Amount Protocol ("**Protocol**") published by the International Swaps and Derivatives Association, Inc. ("**ISDA**").

The primary function of the Protocol is to replace the concepts of "Market Quotation" and "Loss" in the terms of certain specified existing 1992 ISDA Master Agreements ("**1992 Master Agreement**") with the concept of "Close-out Amount" under the 2002 ISDA Master Agreement ("**2002 Master Agreement**").

The Protocol provides a contractual mechanism by which parties to certain specified 1992 Master Agreements can, by adhering to the Protocol, amend the terms of each of those 1992 Master Agreements, certain ISDA definitions booklets and ISDA credit support documents in a consistent manner.

There is currently no cut-off date for market participants to adhere to the Protocol. ISDA may, by giving 30 days' notice on its website designate a cut-off date but, in its press release announcing the publication of the Protocol, noted that the Protocol "is a so called 'evergreen' protocol and will remain open for adherence indefinitely".

AFMA makes no recommendation as to whether or not parties should adhere to the Protocol. However, subject to any particular commercial and legal reasons particular to the parties, AFMA and its Documentation Committee see no valid reason why parties to a 1992 ISDA Master Agreement should not replace the concepts of "Market Quotation" and "Loss" in such agreement with the concept of "Close-out Amount" under the 2002 ISDA Master Agreement.

The advice has been inserted in 2.1.6.20.