

UPDATE 11

22 July 2005

Contents

[U11.01] Part 22 - Credit Support

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Major changes have been made to Part 22. Broadly this has involved including additional commentary on credit support and ISDA credit support documentation, including material explaining issues around indirectly held securities and reordering a lot of material. Specifically:

- (a) The commentary on credit support has been expanded to include a summary of the key ISDA credit support documentation in addition to the 1995 ISDA Credit Support Annex (Bilateral Form - Transfer) (the “**English Annex**”). Specifically, it now includes an overview of each of the following:
 - (i) 1994 ISDA Credit Support Annex (the “**New York Annex**”);
 - (ii) 1995 ISDA Credit Support Deed (Bilateral Form - Security Interest) (the “**English Deed**”);
 - (iii) 2001 ISDA Margin Provisions;
 - (iv) ISDA Collateral Asset Definitions;
 - (v) 2005 ISDA Collateral Guidelines;
 - (vi) standard form amendments to the English Annex and the New York Annex; and
 - (vii) ISDA 2002 Master Agreement Protocol.See [22.04] and [22.06] to [22.12].
- (b) Commentary has been included for the English Annex and the New York Annex. See [22.20] to [22.37].
- (c) The legal commentary on the English Annex has been shortened. Part 22 no longer contains a summary of Mallesons Stephen Jaques’ legal opinion to ISDA on the English Annex. Instead, readers are referred to the full opinion which is available to ISDA members at <http://www.isda.org>. However, the legal commentary now includes a confirmation that the conclusions in Mallesons Stephen Jaques’ legal opinion would apply to the English Annex whether governed by English law or the laws of any one of New South Wales, Victoria, Queensland, Western Australia or the Australian Capital Territory. See [22.34] to [22.37].

- (d) The Australian specific tax and stamp duty commentary has been updated to reflect recent changes in Australian law. In addition, the stamp duty commentary has been streamlined to highlight the fact that there is no substantive difference in the stamp duty position in each Australian jurisdiction. (This is based on the assumptions at the start of the stamp duty section as to the type of collateral that will be provided.) See [22.38] to [22.52].
- (e) Some specific additional provisions have been included in the commentary on completing the English Annex. These provide for:
 - (i) parties to restrict the application of the English Annex to specific types of transactions;
 - (ii) incorporation of provisions from the ISDA 2002 Master Agreement Protocol that are relevant to the English Annex where the related master agreement is the 2002 ISDA Master Agreement; and
 - (iii) amendments to the “Valuation Percentage” which applies to determine the Value of the Credit Support Balance in the context of a default where the related master agreement is the 1992 ISDA Master Agreement. (This amendment provides for the same treatment of credit support in the context of a default which applies where the related master agreement is the 2002 ISDA Master Agreement and the relevant provisions of the ISDA 2002 Master Agreement Protocol have been incorporated.)

See [22.62] to [22.64].

- (f) Commentary has been included on issues relating to credit support which is in the form of indirectly held securities. See [22.65] to [22.68].
- (g) The short form amending agreement to incorporate the English Annex in an existing ISDA Master Agreement has been removed from Part 22. This amending agreement is unnecessary because the English Annex is expressed to:
 - (i) form part of the related ISDA Master Agreement; and
 - (ii) constitute a “Transaction” under the related ISDA Master Agreement.