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# **User's Guide**

## **to the**

### **1998 FX and**

#### **Currency**

##### **Option Definitions**

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**ISDA®**

INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

**EMTA®**

EMERGING MARKETS TRADERS ASSOCIATION

**THE FOREIGN EXCHANGE  
COMMITTEE**

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## INTRODUCTION

In early 1997, the International Swaps and Derivatives Association, Inc. (“ISDA”), the Emerging Markets Traders Association (“EMTA”) and the Foreign Exchange Committee (the “FX Committee”), formed a working group (“the Working Group”) to develop standard documentation for certain FX and Currency Option Transactions involving emerging market currencies. In the process, the Working Group recognized the need to revise the 1992 ISDA FX and Currency Option Definitions (the “1992 Definitions”) and has worked to update that document. The result of this effort is the 1998 FX and Currency Option Definitions (the “Definitions”) published by ISDA, EMTA and the FX Committee. Capitalized terms used but not defined in this User’s Guide have the meanings given to such terms in the Definitions. The website addresses for the Sponsoring Organizations are: ISDA ([www.isda.org](http://www.isda.org)), EMTA ([www.emta.org](http://www.emta.org)), and the FX Committee ([www.ny.frb.org/fxc](http://www.ny.frb.org/fxc)). The Financial Market Lawyers Group (“FMLG”), which provides legal advice to the FX Committee, also has a website ([www.ny.frb.org/fmlg](http://www.ny.frb.org/fmlg)).

The Definitions to which this User’s Guide relates were prepared for use in documenting privately negotiated FX and Currency Option Transactions. The purpose of the Definitions is to provide market participants with a basic framework for the documentation of Deliverable and Non-Deliverable (cash-settled) Transactions, including Transactions involving developed countries’ currencies and/or emerging market currencies. The Definitions can be used with Transactions documented under various master agreements, including (i) the 1992 ISDA Master Agreements (published by ISDA), (ii) the International Foreign Exchange and Options Master Agreement (the “FEOMA”), the International Foreign Exchange Master Agreement (the “IFEMA”) and the International Currency Options Market Master Agreement (the “ICOM”), each published by the FX Committee in association with the British Bankers’ Association (the “BBA”), the Canadian Foreign Exchange Committee and the Tokyo Foreign Exchange Market Practices Committee and (iii) other similar agreements.

The Definitions update and expand on the 1992 Definitions, primarily with new provisions and forms for certain types of cash-settled and Deliverable Transactions. These provisions and forms also update and expand on provisions of the FEOMA and IFEMA relating to cash settled FX and Currency Option Transactions, as well as the current addenda to the FEOMA and IFEMA. In order to apply the Definitions to FX and Currency Option Transactions governed by the FEOMA, IFEMA or ICOM, execution of an addenda to these agreements may be required. Suggested forms of addenda for each of these agreements (the “Addenda”), together with a practitioner’s guide, have been separately published by the FX Committee, together with representatives of the BBA, the Canadian Foreign Exchange Committee and the Tokyo Foreign Exchange Market Practices Committee. The FEOMA, IFEMA and ICOM, the Addenda and relevant guides are available on the FX Committee and FMLG’s websites.

The most significant concepts introduced in the Definitions are Disruption Events and Disruption Fallbacks, which enable parties to a Transaction to allocate certain event risks by providing an agreed-upon method for determining an exchange rate or settling a Transaction upon the occurrence of such events. The second principal change in the Definitions from current foreign exchange documentation is the inclusion of currency spot rate definitions that can be used for Non-Deliverable Transactions. These definitions are set forth in Annex A to the Definitions and will be updated periodically. The Definitions also contain certain other changes from current foreign exchange documentation and additional provisions, which are discussed herein.

The Definitions can be used for Deliverable and Non-Deliverable FX spot and forward Transactions and different styles of Deliverable and Non-Deliverable Currency Option Transactions, including American, Bermuda and European style options. The Definitions do not attempt to cover every type of Transaction that has been or may be done in privately negotiated currency transactions. The Definitions, however, may be updated periodically to include additional definitions and provisions if prevailing market practice supports such a change. In addition, the Definitions can be a useful starting point when drafting a Confirmation for a product type not directly covered by the Definitions, such as swaps or other derivative transactions involving emerging market currencies.

This User's Guide provides an overview and detailed explanation of the provisions of the Definitions, which are illustrated through the use of historical examples and flow charts. It also highlights legal and market practice issues that parties should consider when applying the Definitions to their FX and Currency Option Transactions. Section I of this User's Guide provides an overview of provisions of the Definitions that introduce significant changes to current foreign exchange documentation. Section II discusses the architecture of documentation of Transactions under the Definitions, addressing how to use the Definitions with Master Agreements and how to confirm Transactions under the Definitions. Section III contains a detailed, article by article analysis of the Definitions. Section IV provides historical examples of events in foreign currency markets and explains how the Definitions could have dealt with such events. Section V contains a table of presumptions. Section VI contains a flowchart of Disruption Events and presumed Disruption Fallbacks illustrating the Disruption Fallbacks that will apply to a Transaction if no Disruption Fallbacks are specified for a Disruption Event. Appendix A contains six sample Confirmations that can be used to document different types of FX and Currency Option Transactions under the Definitions. Finally, Appendix B contains new rate sources added to Annex A of the Definitions as of February 1, 1999. The publication date of this User's Guide is March 1999.

**THIS USER'S GUIDE DOES NOT PURPORT AND SHOULD NOT BE CONSIDERED TO BE A GUIDE TO OR EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN A PARTICULAR TRANSACTION OR CONTRACTUAL RELATIONSHIP. PARTIES, THEREFORE, SHOULD CONSULT WITH THEIR LEGAL ADVISORS AND ANY OTHER ADVISORS THEY DEEM APPROPRIATE PRIOR TO USING THE DEFINITIONS AND/OR THIS USER'S GUIDE. THE SPONSORING ORGANIZATIONS ASSUME NO RESPONSIBILITY FOR ANY USE TO WHICH THE DEFINITIONS OR THIS USER'S GUIDE MAY BE PUT.**



## **USER'S GUIDE TO THE 1998 FX AND CURRENCY OPTION DEFINITIONS**

### **I. OVERVIEW OF THE DEFINITIONS**

The Definitions are structured in the following manner: (i) Article 1 contains general definitions for FX and Currency Option Transactions, (ii) Article 2 contains general terms and settlement provisions for FX Transactions, including a formula for the settlement of Non-Deliverable FX Transactions, (iii) Article 3 contains general terms and exercise and settlement provisions for Currency Option Transactions, including formulas for the settlement of Non-Deliverable Currency Option Transactions, (iv) Article 4 contains definitions of currencies, their principal financial centers, rate sources and certain other provisions relating to rate sources (the majority of these provisions are published in Annex A to the Definitions) and (v) Article 5 contains definitions and provisions relating to Disruption Events and Disruption Fallbacks.

The Definitions are designed to govern each FX and Currency Option Transaction as agreed by the parties in the relevant Confirmation. The parties may agree to provisions of the Definitions that change or supplement the provisions of their master agreement. Discussed below are the most significant provisions of the Definitions that modify or supplement terms of the ISDA Master Agreement and the FEOMA, IFEMA and ICOM.

#### **A. Methods of Determining the Settlement Amount for Deliverable and Non-Deliverable Transactions**

The Definitions are intended to be consistent with existing practice with respect to the settlement of Deliverable Transactions. Unless the parties otherwise specify, Transactions are deemed to be Deliverable, and they will settle by payment of the currencies and amounts specified as payable in the Confirmation (*see* Sections 2.2(a) and 3.7(a) of the Definitions). Similarly, for standard Non-Deliverable Currency Options in currencies of developed countries, in which parties typically do not specify a currency (the Settlement Currency) in which the Transaction will settle, the Definitions follow standard option settlement procedures used under the 1992 Definitions and the FEOMA and ICOM (*see* Section 3.7(c)(ii) of the Definitions).

In contrast, the Definitions have new provisions for determining the settlement amounts for certain Non-Deliverable Transactions. The Settlement Currency Amount for a Non-Deliverable FX Transaction is an amount expressed in the Settlement Currency and determined in accordance with a formula where the Forward Rate and Settlement Rate are both expressed as an amount of Reference Currency per one unit of Settlement Currency (*see* Section 2.2(b) of the Definitions). Similarly, with respect to Currency Option Transactions in which the parties specify a Settlement Currency, which typically is done if an emerging market currency is involved, the In-the-Money Amount will be calculated based on a Strike Price and Settlement Rate, each expressed as an amount of Reference Currency per one unit of Settlement Currency. There is a different formula depending on whether the Settlement Currency is the Call Currency or the Put Currency (*see* Section 3.7(c) of the Definitions). Consequently, the In-the-Money Amount will always be expressed in the Settlement Currency. As explained in Section III.B below, these different methods of calculating settlement amounts have implications for the terms of Confirmations of the relevant Transactions.

## **B. Settlement Rate Options**

Under the Definitions, determining the settlement amount for a Non-Deliverable FX Transaction or Currency Option Transaction involves the calculation of the Settlement Rate, which in many cases will be the Spot Rate on the Valuation Date. The Definitions provide various rate sources for determining the relevant Spot Rate. These sources are set forth in the Settlement Rate Options for different currencies (grouped according to four regions—Asia, Central and Eastern Europe, Latin America and the Middle East and Africa) published in Annex A, as discussed more fully in Section III.E.2 below.

Initially, the Working Group decided to limit the Definitions to Transactions involving a Settlement Currency versus a Reference Currency (the significance of which is discussed below in Section III.E.2). In addition, most of the rates in Annex A are quoted in terms of the amount of local currency or emerging market currency (typically the Reference Currency) per U.S. dollar (typically the Settlement Currency). These limitations are based on the relative prevalence of such Non-Deliverable Transactions in the market, as opposed to Non-Deliverable Transactions that settle in a currency other than the U.S. dollar. However, certain rates are quoted in terms of the amount of Reference Currency per one unit of Settlement Currency. These rates can be used for Transactions to be settled in a hard currency other than the U.S. dollar. If a rate is quoted in a currency other than the U.S. dollar (and is not a rate in Annex A quoted in terms of the amount of Reference Currency per one unit of Settlement Currency), such rate can be included in the Confirmation. To the extent that a quote in a currency other than the U.S. dollar is not available, the relevant rate can be obtained by creating an appropriate bridge between the local currency-U.S. dollar and the other currency-U.S. dollar to arrive at the rate for the local currency-other currency. This bridge has not been provided in the Definitions, but the parties can develop and include such a bridge in their Confirmation.

Parties also may desire to develop annexes to the Definitions for more complex foreign exchange transactions, such as Non-Deliverable Transactions settling in a third currency, barrier options and others.

The Definitions are updated periodically to include additional currency and currency spot rate definitions and provisions if prevailing market practice supports such a change. The currency and currency spot rate definitions are added to or revised from time to time, as Transactions involving rates and currencies not included in the Definitions become more prevalent, and to reflect changes in market practice and standards. Accordingly, Annex A was published in a loose-leaf format in order to accommodate such revisions. A copy of the current version of these Definitions and Annex A may be obtained by contacting ISDA, EMTA or the FX Committee at the Federal Reserve Bank of New York. To avoid potential confusion, parties to a Transaction may want to specify the version of Annex A that is being incorporated by reference to a date (*e.g.*, “March 1998 version”) or an “as amended through” date (*e.g.*, “March 1998 version as amended through September 11, 1998”).<sup>1</sup> Unless otherwise agreed, parties will be deemed to have incorporated Annex A as amended through the date on which the parties enter into the Transaction.

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<sup>1</sup> Amendments to Annex A are available on the websites of the Sponsoring Organizations.

## **C. Article 5: Disruption Events and Disruption Fallbacks**

Parties to a Transaction may wish to address the effect of political risks or other disruptions in the market for one or both of the currencies involved in the Transaction. Article 5 of the Definitions enables the parties to allocate certain risk events, called Disruption Events, by providing an agreed upon method for determining a Settlement Rate or settling a Transaction upon occurrence of any of these events, called a Disruption Fallback. The Disruption Events and Disruption Fallbacks were given a great deal of attention by the Working Group, because they involve a number of issues on which no uniform market practice has developed. Only one Disruption Event, Price Source Disruption, is presumed to apply to a Non-Deliverable Transaction, and no Disruption Events are presumed to apply to a Deliverable Transaction (*see* Section 5.1(e)(i) of the Definitions). All other Disruption Events are elective. The Working Group determined that approaches to Disruption Events would vary greatly at different institutions, under different circumstances or with respect to different currencies and countries. Therefore, the Definitions use a “menu” approach that allows the parties to elect the applicable Disruption Events in the Confirmation to reflect their commercial intention.

Section 5.1 contains definitions of Disruption Events that may be relevant in a Deliverable or Non-Deliverable FX or Currency Option Transaction, such as a Transaction involving an emerging market currency. The Disruption Events can be grouped into the following categories: (i) price source risks (Dual Exchange Rate, Illiquidity, Price Materiality, Price Source Disruption), (ii) convertibility and transferability risks (General and Specific Inconvertibility, General and Specific Non-Transferability, Inconvertibility/Non-Transferability), (iii) sovereign risks (Government Authority Default, Nationalization), and (iv) other risks (Benchmark Obligation Default, Material Change in Circumstance). Any of these risks, and consequently the Disruption Events, may be applied to a currency in a Transaction, together with Disruption Fallbacks that provide a means of determining the Settlement Rate or settling the Transaction, as the case may be.

Section 5.2 contains definitions of Disruption Fallbacks which the parties may select in the Confirmation. The Working Group realized the need to simplify the choices that parties must make in order to promote market liquidity and therefore decided that the Definitions would provide that certain Disruption Fallbacks are presumed to apply any time certain Disruption Events are chosen (*see* Section 5.2(e) of the Definitions). Thus, parties need only specify the Disruption Event and the relevant Disruption Fallback will be triggered automatically upon occurrence of the Disruption Event (provided that such event is continuing on either the Valuation Date or the Settlement Date, as set forth in Section 5.1(f) of the Definitions). If the parties want to select different Disruption Fallbacks (or craft their own Disruption Events or Fallbacks not covered by the Definitions), or modify the presumptions set forth in the Definitions, they can so specify in the Confirmation. Disruption Events and Disruption Fallbacks are more fully discussed in Section III.F below.

## **II. ARCHITECTURE OF DOCUMENTATION**

The Definitions are designed to govern each FX and Currency Option Transaction as agreed to by the parties in the relevant Confirmation. The Definitions may contain provisions that supplement or modify the terms of any master agreements or confirmations that an institution has in place to govern its FX and Currency Option Transactions. These differences might be substantive in nature, the most significant of which are discussed in Section I above. These differences also may affect the

documentation that the parties must use to effectively apply the Definitions to a particular FX or Currency Option Transaction. This Section describes the documentation necessary to apply the Definitions to Transactions governed by 1992 ISDA Master Agreement and the FEOMA, IFEMA, and ICOM. It also addresses operational issues involved in confirming such Transactions.

#### **A. Use of Definitions with Master Agreements**

The Definitions presume that a party's master agreement permits amendment of provisions of the master agreement through execution of a Confirmation and, in the event of any inconsistency between the master agreement and a Confirmation, that the Confirmation will prevail. Provisions of the 1992 ISDA Master Agreement on amendments and rules of priority are consistent with this approach. Specifically, Section 1(b) of the 1992 ISDA Master Agreement provides that, in the event of any inconsistency, the Confirmation prevails over the ISDA Master Agreement for the purpose of the relevant Transaction. Therefore, the Definitions can be applied to a particular Transaction governed by the 1992 ISDA Master Agreement by stating that the Definitions apply in a Confirmation. Any provisions of the Definitions or the Confirmation that are not consistent with the provisions of the ISDA Master Agreement would prevail under the rule of priority set forth in Section 1(b). If parties have amended their ISDA Master Agreement to alter these rules of priority, the parties should consider what changes should be made to their ISDA Master Agreements. Further, the Confirmation also can provide that in the event of any inconsistency between the Confirmation and the Definitions, the Confirmation would prevail.

In contrast, Section 2.4 and certain other provisions of the U.S. versions of the FEOMA and IFEMA provide that the terms of the master agreement will have priority over the Confirmation of an FX Transaction in the event of an inconsistency. With these provisions, it would be necessary for parties who desire to apply the Definitions to a particular FX Transaction through the relevant Confirmation, including terms of the Definitions that amend the master agreement, to execute a "bridge". The "bridge" can take the form of an addendum or Schedule to the relevant master agreement or any other form of documentation intended by the parties to amend them. If a master agreement has not yet been executed, the addendum may be integrated into the Schedule as an additional part of the Schedule. The "bridge" should provide, among other things, for the circumstances under which the relevant Confirmation and the Definitions will have priority over the master agreement. It should be noted that, like the 1992 ISDA Master Agreement, provisions of the FEOMA and ICOM with respect to Currency Option Transactions (including Sections 2.4 and 11.12), as well as provisions of the BBA's published versions of the FEOMA and IFEMA, permit amendment of the master agreement with a Confirmation. However, even when these provisions govern, the parties may desire to adopt a supplement to their master agreement to facilitate the confirmation process, particularly for Deliverable FX Transactions in currencies of developed countries.

Suggested forms of addenda (the "Addenda") for the FEOMA, IFEMA, and ICOM, together with a practitioner's guide, have been published separately by the FX Committee. The general approach of these Addenda is to apply the terms of the Definitions to all FX and Currency Option Transactions between the parties, including those outstanding on the date of execution of such Addenda. The Addenda further provide that, in the event of inconsistency, the Confirmation has priority over the Definitions and the Confirmation and the Definitions have priority over the master agreement. There is an exception to this rule for Confirmations of Deliverable FX

Transactions, which must specify that they have priority over the master agreement and be signed or exchanged by both parties. This is intended to protect parties against inadvertently accepting a non-standard provision in a Confirmation of a Deliverable FX Transaction, which is likely to be subject to straight-through (automated) processing. Currency Option Transactions (other than cash-settled trades involving developed countries' currencies) and Non-Deliverable FX Transactions do not raise this level of concern because they are likely to be individually reviewed and negotiated.

Section 1.4 of the Definitions, which defines the term "Confirmation," specifies that the Confirmation must be "effective". This is intended to include effectiveness in accordance with the terms of the master agreement, such as the provisions of the Addenda, as to when the Confirmation has priority over the master agreement for particular types of Transactions.

## **B. Confirmations**

Exhibits I through II-E to the Definitions set forth provisions that the parties may include in a letter agreement confirming a Deliverable or Non-Deliverable FX or Currency Option Transaction under the Definitions. Sample forms of Confirmations included in Appendix A were developed to illustrate how the provisions in Exhibits I through II-E work. The Confirmation is instrumental under the Definitions because it both provides for application of the Definitions to a particular Transaction and, where appropriate, specifies which terms of the Definitions will apply to such Transaction. As discussed above, the Definitions assume that Confirmations will have priority over master agreements and the Definitions. This is explicitly provided for in Exhibit I, which contains an introduction, standard paragraph, and closing for a Confirmation.

For Deliverable Transactions involving currencies of developed countries, it is expected that Confirmations will closely resemble those currently used. With respect to such Transactions, the Definitions have been designed to be similar to provisions in the 1992 Definitions and the FEOMA, IFEMA, and ICOM. Exhibits II-A and II-C to the Definitions set forth the additional provisions that would be needed in Confirmations of these Transactions under the Definitions. Under the Definitions, no Disruption Events or Disruption Fallbacks are presumed to apply to a Deliverable Transaction (*see* Section 5.1(e)(i) of the Definitions). In addition, the method of determining the settlement amount for such Transactions is consistent with provisions in current foreign exchange documentation. The parties therefore can confirm such Transactions via SWIFT message or other automated or "straight-through" processing methods (*e.g.*, confirmations issued automatically and mailed on a pre-printed form). The parties also can confirm Deliverable Transactions involving emerging market currencies via an automated processing method, so long as they have agreed not to address market disruptions.

Parties, however, may desire to apply certain Disruption Events and Disruption Fallbacks to Non-Deliverable Transactions (other than the presumed event of Price Source Disruption), or to Deliverable Transactions involving emerging market currencies. Exhibit II-E to the Definitions sets forth additional provisions that could be included in a Confirmation in order to apply Disruption Events and Disruption Fallbacks to a Transaction with respect to the Event Currency, which is the currency of the applicable jurisdiction that must be affected by the Disruption Event. Unless otherwise specified in the Confirmation, with respect to a Non-Deliverable Transaction, the Event Currency is presumed to be the Reference Currency (*see* Section 5.4(c) of the Definitions). With respect to a Deliverable Transaction, the parties must specify the Event Currency in their

Confirmation. The parties then would make elections for both Deliverable and Non-Deliverable Transactions of events with the word “Applicable” next to the relevant Disruption Event, and elections of Disruption Fallbacks by stating the term used in Article 5 (e.g., Settlement Postponement) and specifying certain information necessary to use the Disruption Fallback (e.g., the maximum permissible time period for postponement of settlement). In the Confirmation, the parties also would either choose a Settlement Rate Option for determining the Spot Rate or specify the Settlement Rate or method for determining the Settlement Rate for a Non-Deliverable Transaction. Parties also would specify such information for a Deliverable Transaction if they have elected the Disruption Fallback, “Non-Deliverable Substitute”, which converts the Transaction to a Non-Deliverable one, and they do not want the Spot Rate in such circumstance to be determined by dealer quotes.

Parties must specify certain additional information in a Confirmation of a Non-Deliverable Transaction in order for the settlement provisions in the Definitions to be operable (as explained in Section III.A.5 below). These provisions are set forth in Exhibits II-B and II-D to the Definitions. Parties also can modify or supplement terms of the Definitions in the Confirmation in order to reflect their agreement. For example, additional Disruption Events (not already defined in the Definitions) can be added to the menu in the Confirmation under “Disruption Events.” The Confirmation also may modify the terms of the Disruption Events and Disruption Fallbacks that have been provided in the Definitions.

If an institution intends to enter into Transactions with protections provided by Disruption Events and Disruption Fallbacks, the institution may need to put processes in place in order to ensure that relevant Confirmations are generated and receive appropriate review. While an institution will most likely have to develop policies and negotiate forms of confirmations in initial Transactions, subsequent Transactions may be more easily documented. Parties may adopt practices that will apply to all Transactions or all Transactions in a particular currency. Alternatively, or in addition, parties may adopt practices for major dealer counterparties that will apply across all Transactions. It is anticipated that the Definitions will facilitate standardization and matching of Confirmations for different types of FX and Currency Option Transactions. In addition, a committee of operations personnel from member institutions of the Working Group currently is studying the feasibility of incorporating Non-Deliverable Transactions, Article 4 rate sources, and Article 5 Disruption Events and Disruption Fallbacks into the SWIFT format. Until the SWIFT format is available, however, it is likely that parties will continue to confirm such Transactions manually or electronically followed by manual confirmation.

### **III. DESCRIPTION OF THE DEFINITIONS—AN ARTICLE-BY-ARTICLE GUIDE**

The following is an article-by-article guide to the Definitions. This Section explains significant provisions of the Definitions and significant changes in definitions and provisions from the 1992 Definitions and the FEOMA, IFEMA and ICOM.

#### **A. Article 1**

Many of the definitions set forth in Article 1 are consistent with those used in current standard foreign exchange documentation. Certain definitions, however, have been modified to reflect current market practices. In addition, new definitions are

included in Article 1 as a result of the introduction of certain concepts in the Definitions, particularly the Settlement Rate Options in Article 4 and the Disruption Events and Disruption Fallbacks in Article 5. Set forth below is a discussion of the key definitions in Article 1, highlighting any modifications to definitions used in other ISDA documents or in the FEOMA, IFEMA and ICOM and any new terms not previously included in such documents.

1. **Business Day.** The Definitions, unlike the 1992 Definitions, use the term Business Day, which is defined differently for purposes of various terms used in the Definitions.<sup>2</sup> Generally (except with respect to Transactions involving the ECU or euro), a Business Day for purposes of the:

a. **Settlement Date and Premium Payment Date,** is a day on which commercial banks effect delivery of the currency to be delivered in the place(s) specified in the Confirmation or, if a place is not specified, in the principal financial centers of such currency. Annex A contains a chart listing the principal financial center or centers for each currency defined in the Definitions. If two currencies are to be delivered on the relevant date, then the Settlement Date must be a Business Day in the principal financial centers of both currencies, unless market convention otherwise provides (*see* Section 1.1(a)(ii)(D) of the Definitions). In certain regions when the Settlement Date falls on a Friday that is a holiday, it is market convention to “split” delivery so that delivery of one currency is made on Friday and delivery of the local currency is made on the following Saturday. The FEOMA, IFEMA and ICOM also incorporate this concept of “split” delivery. Parties should carefully consider the implications of this “split” delivery concept for a Transaction in which any of the Disruption Events and Disruption Fallbacks in Article 5 apply. In particular, the provisions of Article 5 provide that certain Disruption Events must have occurred and be continuing on the Settlement Date in order for the applicable Disruption Fallbacks to be automatically triggered (*see* Section 5.1(f) of the Definitions). If any of these Disruption Events apply to a Transaction where delivery is “split”, the applicable Disruption Fallbacks may be triggered on either Friday or Saturday. The Disruption Fallbacks, however, all contemplate that both currencies are delivered on the same day and, accordingly, would have to be modified to account for “split” delivery.

b. **Valuation Date,** is a day on which commercial banks are open for business in the place(s) specified in the Confirmation or, if no place is specified, (i) in the principal financial center of the Reference Currency or, in the case of a Currency Option Transaction where a Reference Currency is not specified, in the principal financial centers of the Call Currency and Put Currency *and* (ii) in the location of the offices through which each party is transacting;

c. **Exercise Date, Specified Exercise Date, Exercise Period and Expiration Date,** is a day on which commercial banks are open in the

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<sup>2</sup> The 1992 Definitions instead use the term “Banking Day”, which is defined as, in respect of any city, any day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in that city. Pursuant to the provisions of the 1992 Definitions, the “Value Date” (the day on which the relevant Transaction settles) and, in the case of a Currency Option Transaction, the Exercise Date and the Expiration Date must be “Banking Days”.

place(s) specified in the Confirmation or, if no place is specified, in the location of the office through which the Seller is transacting;<sup>3</sup>

**d. *each Settlement Rate Option***, is a day on which commercial banks are open in the place(s) specified in the Confirmation or, if no place is specified, in the principal financial center of the Reference Currency; and

**e. *other provisions in the Definitions***, is a day on which commercial banks are open in the place(s) specified in the Confirmation or, if no place is specified, in the location of the offices through which each party is transacting.

The Definitions also contain specific provisions addressing what constitutes a Business Day for Transactions involving the ECU or euro. A Business Day for Transactions in which the relevant currency is the ECU, is an ECU Settlement Day, meaning a day on which payments in ECU can be settled in the international interbank market *and* in the place where the relevant account for payment is located. A Business Day for Transactions in which the relevant currency is euro is a Euro Settlement Date, meaning a day on which the TARGET system is open. *Parties should carefully consider whether these definitions should be modified now that the third stage of European Economic and Monetary Union (“EMU”) is in effect.* In particular, the law governing an FX or Currency Option Transaction may provide that references to ECU will be replaced by references to euro in any contract, agreement or instrument at a rate of one euro for one ECU (*see* Council Regulation (EC) No 1103/97). For purposes of defining a Business Day, if a local settlement system in a country participating in EMU is closed on a day on which the TARGET system is open, then such day would not be a Business Day for Transactions in euro that were formerly Transactions in ECU, whereas such day would be a Business Day for all other Transactions that were in euro from the outset. The same issue might also arise in relation to Transactions in the currency of a country participating in EMU. Ultimately, references to such a currency would be replaced by references to euro at the appropriate conversion rate. If parties have specified that a Business Day is a day on which commercial banks effect delivery in a particular location and the local payment system is not open on certain TARGET open days, there will be a difference in treatment between “legacy” Transactions and new euro Transactions. As of the date this User’s Guide was published, it is too early to conclude whether such a situation will result because it is not clear whether there will be a divergence between the days any particular local settlement system is open and the days the TARGET system is open. Parties wishing to address these issues should consider incorporating the 1998 Euro Definitions published by ISDA for use in conjunction with ISDA documentation, including the Definitions.

The definition of Business Day also includes certain provisions to remove any embedded postponement period for triggering the Disruption Fallbacks applicable to a Transaction. As discussed in Section III.F.1.d below, in order to trigger Disruption Fallbacks, a Disruption Event must have occurred and be continuing on either the Valuation Date or the Settlement Date, as appropriate. Pursuant to the provisions of Sections 1.16(f) and 1.24 of the Definitions, if either of these dates is not a Business Day, it will be adjusted in accordance with the applicable Business Day Convention. As a general rule, if commercial banks do not effect delivery of the currency to be delivered in

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<sup>3</sup> Unless parties otherwise specify, the Exercise Date will also be the Valuation Date for a Non-Deliverable Currency Option Transaction (*see* Section 1.16(f) of the Definitions). If the Exercise Date is not a Business Day for purposes of the definition of Valuation Date, the Valuation Date will be adjusted in accordance with the applicable Business Day Convention.



the relevant jurisdiction, the Settlement Date will be adjusted forward to the next succeeding Business Day and if commercial banks are not open in the relevant jurisdiction, the Valuation Date will be adjusted back to the first preceding Business Day. Section 1.1(a) of the Definitions, however, provides that a date will be considered to be a Business Day (and, therefore, will not be adjusted in accordance with the applicable Business Day Convention) if, for purposes of (i) the Settlement Date, commercial banks would have effected delivery of the relevant currency or (ii) the Valuation Date, commercial banks would have been open in the relevant location, but for the occurrence of a Disruption Event applicable to a Transaction.

The difficulty with the solution in Section 1.1(a) to the “embedded postponement” problem is that the Definitions, unlike the 1993 ISDA Commodity Derivatives Definitions and the 1996 ISDA Equity Derivatives Definitions which include specific events for the suspension of trading, do not include a specific Disruption Event for the closure of banks due to a banking moratorium or other similar event. Therefore, Section 5.1(f) of the Definitions provides that a Business Day for purposes of the Settlement Date and Valuation Date includes any day on which, in the case of the Settlement Date, commercial banks would have effected delivery of the relevant currency or, in the case of the Valuation Date, commercial banks would have been open but for the occurrence in the relevant jurisdiction of a banking moratorium or other similar event related to a Disruption Event applicable to a Transaction.

However, there may be circumstances where, rather than the above-mentioned result, parties would prefer to have the Valuation Date or Settlement Date, as the case may be, adjusted in accordance with the applicable Business Day Convention because of the unscheduled closure of commercial banks. Certain members of the Working Group argued that if parties have at least one week advance notice of an unscheduled closure of the commercial banks, they should be able to properly hedge their positions so that any applicable Disruption Fallbacks should not be triggered. These members also believed that an unscheduled closure that is announced and occurs on the same day should trigger any applicable Disruption Fallbacks because their positions could not be properly hedged. However, there is no bright line as to when such a circumstance should and should not constitute a Disruption Event and trigger the associated Disruption Fallbacks. *See* the discussion of these issues as related to (i) the Price Source Disruption Event in Section III.F.1.c below and (ii) recent events in Indonesia in Section IV.A below.

**2. Business Day Convention.** The Definitions provide a menu of Business Day Conventions that parties may specify as applicable to a relevant date. If the parties do not specify otherwise, the Following Business Day Convention is presumed to apply to the Settlement Date, Premium Payment Date, Expiration Date and Specified Exercise Date(s), so that if any of those dates is not a Business Day, it will be adjusted forward to the next succeeding Business Day. The Preceding Business Day Convention is presumed to apply to the Valuation Date and an Averaging Date, so that if either of those dates is not a Business Day, it will be adjusted back to the next preceding Business Day in accordance with the Preceding Business Day Convention. This convention, however, may not be the market practice in all regions; in particular, in certain regions the Valuation Date is adjusted forward to the next succeeding Business Day. Nonetheless, the Working Group determined that the Preceding Business Day Convention should be the presumed convention for the Valuation Date and an Averaging Date because such presumption (a) conforms with market practice in several regions and (b) eliminates the risk that, in certain circumstances, the Valuation Date would be adjusted forward so that the Valuation Date and Settlement Date would occur on the same day. In a region where the

Business Day Convention is not Preceding, parties should specify the appropriate convention in their Confirmation.

**3. Calculation Agent.** Parties must specify the Calculation Agent in their Confirmation. Among other things, the Calculation Agent is responsible for: (i) determining the Spot Rate for a Non-Deliverable Transaction if a Settlement Rate Option is not specified in the relevant Confirmation or deemed specified pursuant to Article 5 of the Definitions; (ii) determining whether a Disruption Event applicable to that Transaction has occurred if “Calculation Agent Determination of Disruption Event” is applicable to a Transaction; (iii) determining the Settlement Rate for a Transaction if “Calculation Agent Determination of Settlement Rate” is applicable to that Transaction (which is a presumed Disruption Fallback for the Dual Exchange Rate, Illiquidity and Price Source Disruption Events); (iv) obtaining the relevant quotations (at a time chosen by it if one is not specified in the Confirmation), calculating the Spot Rate for the relevant Rate Calculation Date, determining any adjustments between the price of a Local Share and an ADR, and, if not specified in the Confirmation, selecting a Specified Company and the Reference Dealers if “Currency-Implied Rate (ADR)” is the Settlement Rate Option applicable to a Transaction; (v) obtaining the relevant quotations (at a time chosen by it if one is not specified in the Confirmation), calculating the Spot Rate for the relevant Rate Calculation Date, and, if not specified in the Confirmation, selecting a Local Asset and the Reference Dealers if “Currency-Implied Rate (Local Asset)” is the Settlement Rate Option applicable to a Transaction; (vi) obtaining the relevant quotations (at a time chosen by it if one is not specified in the Confirmation), calculating the Spot Rate for the relevant Rate Calculation Date and, if not specified in the Confirmation, selecting the Reference Dealers and, in certain circumstances, the Specified Offices if “Currency-Reference Dealers” is the Settlement Rate Option applicable to a Transaction; and (vii) determining the Spot Rate for the relevant Rate Calculation Date if “Currency-Wholesale Market” is the Settlement Rate Option applicable to a Transaction. To the extent that the aforementioned information is specified in the Confirmation, the role, and consequently the importance, of the Calculation Agent in a Transaction is diminished. The Calculation Agent, however, will continue to have the responsibilities provided for in the relevant master agreement.

**4. Deliverable and Non-Deliverable Transactions.** A Deliverable Transaction is one in which each party pays the amount of currency specified as payable by it in the Confirmation. In a Non-Deliverable Transaction, physical delivery of the underlying currency (the Reference Currency) does not take place; instead one party pays an amount in a specified currency (the Settlement Currency) based on the difference between the Forward Rate or the Strike Price, as the case may be, and the Settlement Rate (as further explained in Sections III.B.2 and III.C.6 below). *A Transaction is presumed to be Deliverable unless the parties specify “Non-Deliverable”, “cash settlement” or “In-the-Money Settlement” in a Confirmation.* If the parties specify one of those three terms in their Confirmation, the Transaction will be a Non-Deliverable Transaction for purposes of the Definitions.

**5. Definitions Relating to Non-Deliverable Transactions.** Certain terms are used in the Definitions only in connection with Non-Deliverable Transactions. As explained below, parties must specify the meaning of some of these terms in their Confirmation in order for the provisions of the Definitions to be operable. With respect to other terms, the Definitions contain presumed meanings so that parties must specify meanings for these terms only if they wish to override such presumptions.

**a. Valuation Date.** The Valuation Date is the date that the “Spot Rate” for a Non-Deliverable Transaction is determined. As discussed in Paragraph 2 above, if the Valuation Date is not a Business Day, it is adjusted to the next preceding Business Day. If the parties do not specify a Valuation Date in their Confirmation, the Valuation Date will be (i) in the case of a Non-Deliverable FX Transaction, two Business Days prior to the Settlement Date and (ii) in the case of a Non-Deliverable Currency Option Transaction, the Exercise Date. Accordingly, it is important for parties to specify a Valuation Date in the Confirmation for all Non-Deliverable FX Transactions where settlement two days after the Valuation Date is not the market practice.

**b. Settlement Rate.** As mentioned above and as further explained in Sections III.B.2 and III.C.6 below, the Settlement Rate is one of the rates used in the formula to determine the payment that is to be made by one party to the other party in a Non-Deliverable Transaction. The Settlement Rate for a Valuation Date will be (i) the currency exchange rate specified in a Confirmation, (ii) the currency exchange rate determined pursuant to a method specified in a Confirmation or (iii) if neither (i) nor (ii) is specified, the Spot Rate for that Valuation Date. Accordingly, in many Non-Deliverable Transactions, the Settlement Rate for a Valuation Date will be the Spot Rate.

**c. Spot Rate.** If parties specify a Settlement Rate Option in their Confirmation (such as a Settlement Rate Option defined in Annex A of the Definitions), then the Spot Rate for a Transaction will be the currency exchange rate determined in accordance with that Settlement Rate Option (e.g., an official government rate published by the relevant governmental authority, a rate determined from market quotations provided by reference dealers, a rate obtained from a Reuters or Telerate screen, a rate implied from the price of local assets or a rate determined by mutual agreement). If the parties do not specify a Settlement Rate Option in their Confirmation, then the Spot Rate for a Non-Deliverable Transaction will be the currency exchange rate determined by the Calculation Agent. This presumption is different from the presumption for cash-settled Currency Option Transactions set forth in the 1992 Definitions and the FEOMA and ICOM. In each of those documents, unless otherwise agreed by the parties, the Spot Rate (or “Spot Price” in the case of the 1992 Definitions) is determined by the Seller.

**d. Reference Currency.** The Reference Currency is the currency whose relative value determines the payment amount, if any, in a Non-Deliverable Transaction. It is not, however, the currency that is actually exchanged on the Settlement Date (that currency is the Settlement Currency). In Transactions involving emerging market currencies, the Reference Currency is often the emerging market currency. Parties must specify a Reference Currency in their Confirmation for a Non-Deliverable FX Transaction. Parties may, but need not, specify a Reference Currency in their Confirmation for a Non-Deliverable Currency Option Transaction (as further explained in Section III.C.6 below).

**e. Reference Currency Notional Amount.** The Reference Currency Notional Amount is the quantity of Reference Currency specified in the Confirmation. If the Reference Currency Notional Amount is not specified in the Confirmation, the Definitions provide that it is the amount equal to (i) in the case of a Non-Deliverable FX Transaction, the Notional Amount multiplied by the Forward Rate and (ii) in the case of a Non-Deliverable Currency Option

Transaction, the Call Currency Amount or the Put Currency Amount, whichever is denominated in the Reference Currency.

**f. Settlement Currency.** As mentioned above, if specified in a Confirmation, the Settlement Currency is the currency in which the payment, if any, will be made by one party to another party in a Non-Deliverable Transaction. Parties must specify a Settlement Currency in their Confirmation for a Non-Deliverable FX Transaction. Parties may specify either the Call Currency or the Put Currency as the Settlement Currency for a Non-Deliverable Currency Option Transaction. If they do not specify a Settlement Currency for such a Transaction, then the Seller must pay the In-the-Money Amount, if any, in the Put Currency in the case of a Call and the Call Currency in the case of a Put. If, however, the parties specify a Settlement Currency in their Confirmation, the Seller must pay the In-the-Money Amount in that currency, regardless of whether such currency is the Call Currency or the Put Currency.

**g. Notional Amount.** The Notional Amount is the quantity of Settlement Currency specified in the Confirmation. If the Notional Amount is not specified, then it will be an amount equal to (i) in the case of a Non-Deliverable FX Transaction, the Reference Currency Notional Amount divided by the Forward Rate and (ii) in the case of a Non-Deliverable Currency Option Transaction, the Call Currency Amount or the Put Currency Amount, whichever is denominated in the Settlement Currency.

**6. Settlement Date.** The Settlement Date in most cases is the date specified as such in the Confirmation (there are certain exceptions to this rule in Article 5, as discussed in Sections III.F.2.i and III.F.2.j below), which is the date the Transaction (whether Deliverable or Non-Deliverable) settles and any applicable payment is made by one party to the other party. The comparable term used in the 1992 Definitions, and the FEOMA, IFEMA and ICOM is the “Value Date”.

## **B. Article 2**

Article 2 contains definitions and the settlement mechanics for Deliverable and Non-Deliverable FX Transactions.

**1. Deliverable FX Transactions.** Section 2.2(a) of the Definitions provides that on the Settlement Date, each party pays the amount of currency specified as payable by it in the related Confirmation. As mentioned in Section II.B above, many market participants use automated confirmation procedures for this type of Transaction. This market practice need not be changed in order for the Definitions to apply to such a Transaction. However, if parties affirmatively choose to apply Disruption Events to such a Transaction, they likely will need to document their Deliverable FX Transaction using a confirmation such as Exhibit II-E to the Definitions.

**2. Non-Deliverable FX Transactions.** In a Non-Deliverable FX Transaction, one party pays to the other party the Settlement Currency Amount. This is an amount determined according to the formula set forth in Section 2.2(b)(ii) of the Definitions. In order to determine the Settlement Currency Amount pursuant to such formula, parties must specify the following information in a Confirmation: (i) the Reference Currency and the Settlement Currency, (ii) any two of the following three terms: the Notional Amount, the Reference Currency Notional Amount and the Forward Rate (expressed as the amount of Reference Currency per one unit of Settlement

Currency) and (iii) a Settlement Rate Option or a Settlement Rate (or a means of determining the Settlement Rate). As discussed in Sections III.A.5.b and III.A.5.c above, if a Settlement Rate or Settlement Rate Option is not specified, the Settlement Rate for a Non-Deliverable FX Transaction will be the Spot Rate determined by the Calculation Agent.

The Settlement Currency Amount is based on the difference between the Forward Rate and the Settlement Rate. Specifically, the Settlement Currency Amount equals the Notional Amount  $\times (1 - (\text{Forward Rate}/\text{Settlement Rate}))$ . The Forward Rate is the currency exchange rate (expressed as the amount of Reference Currency per one unit of Settlement Currency) specified in the Confirmation. The Settlement Rate (expressed as the amount of Reference Currency per one unit of Settlement Currency) is determined on the Valuation Date. As mentioned in Section III.A.5.a above, if parties do not specify a Valuation Date in their Confirmation, the Valuation Date will be deemed to be two Business Days before the Settlement Date.

If the Settlement Rate is greater than the Forward Rate (*i.e.*, the value of the Reference Currency vis-à-vis the Settlement Currency has decreased, so that one unit of the Settlement Currency buys more Reference Currency on the Valuation Date than it would have bought at the Forward Rate specified in the Confirmation), then the Reference Currency Buyer will pay the Settlement Currency Amount to the Reference Currency Seller. If the Settlement Rate is less than the Forward Rate (*i.e.*, the value of the Reference Currency vis-à-vis the Settlement Currency has increased, so that one unit of the Settlement Currency buys less Reference Currency on the Valuation Date than it would have bought at the Forward Rate specified in the Confirmation), then the Reference Currency Seller will pay the absolute value of the Settlement Currency Amount to the Reference Currency Buyer.

Non-Deliverable FX Transactions may include cash settled FX Transactions in the currencies of developed countries. These transactions settle in one currency based on the difference between a contractual exchange rate and the market rate (rather than settling by the actual exchange of two currencies) and are sometimes referred to as “contracts for differences”. For purposes of the Definitions, these transactions would be treated as Non-Deliverable FX Transactions provided that the parties specify one of the two currencies as the Settlement Currency. When engaging in these transactions, parties frequently do not specify a rate source in the relevant documentation, but instead determine the applicable rate by mutual agreement preceding settlement of the transactions. However, if parties wish to use a specific rate source or means to determine the rate, they must either specify such a rate source or means in their Confirmation or use one of the general rate sources included in the Definitions (as discussed in Section III.E.2 below) because specific rate sources for developed countries’ currencies are not currently included in the Definitions. Alternatively, parties may choose to document these transactions using provisions such as those included in Part VI of the Schedule to the IFEMA or Part VI.B of the Schedule to the FEOMA.

### **C. Article 3**

**1. Certain Definitions and Provisions.** Section 3.1 of the Definitions contains certain general terms for a Currency Option Transaction that must be specified in a Confirmation, including: (i) the Buyer and Seller, (ii) the Type (*i.e.*, a Call or a Put with respect to the corresponding currency), (iii) the Call Currency and the Put Currency,

(iv) the Call Currency Amount or the Put Currency Amount,<sup>4</sup> (v) the Style (*i.e.*, American, Bermuda or European) and (vi) the Strike Price. As discussed in Paragraph 3 below, the parties also must specify certain additional information with respect to the exercise of the option.

**2. *Styles of Currency Option Transactions.*** The Definitions include provisions for three styles of Currency Option Transactions—American, Bermuda and European. An American style Currency Option Transaction can be exercised on any Business Day during a specified Exercise Period. A Bermuda style Currency Option Transaction can be exercised on certain Specified Exercise Dates. A European style Currency Option Transaction can be exercised only on the Expiration Date.

**3. *Terms Relating to Exercise.*** In addition to the information mentioned in Paragraph 1 above, parties must specify certain information relating to exercise of the option in a Confirmation, including: (i) an Expiration Date and an Expiration Time for all Currency Option Transactions, (ii) the Commencement Date of the Currency Option Transaction if it is a date other than when the parties entered into the Transaction (*i.e.*, the Trade Date), (iii) an Exercise Period for an American style Currency Option Transaction if it is a period other than one commencing on the Trade Date and ending on the Expiration Date and (iv) the Specified Exercise Date(s) for a Bermuda style Currency Option Transaction. Parties may also specify the Latest Exercise Time for American and Bermuda style Currency Option Transactions, which is the latest time on a Business Day an option may be exercised. If this information is not specified in the Confirmation, the Latest Exercise Time is presumed to be the Expiration Time.

**4. *Exercise.*** Unless otherwise specified in a Confirmation, a Currency Option Transaction may be exercised only in whole. Parties that specify in a Confirmation that a Currency Option Transaction may be exercised in part should carefully consider the interaction of partial exercise with the provisions of Article 5.

A Buyer exercises the Currency Option Transaction by giving notice during the Exercise Period. The Exercise Period for (i) an American style Currency Option Transaction includes all Business Days in the period from (and including) the Trade Date (or the Commencement Date, if specified) to (and including) the Expiration Date, (ii) a Bermuda style Currency Option Transaction, is each Specified Exercise Date in the period from the Trade Date to the Expiration Date and (iii) a European style Currency Option Transaction, is the Expiration Date. A notice is effective upon receipt by the Seller if received prior to the Latest Exercise Time (which is presumed to be the Expiration Time) on that day, in the case of an American or Bermuda style Currency Option Transaction, or the Expiration Time in the case of a European style Currency Option Transaction. If, in the case of an American style Currency Option Transaction, the notice is received after the Latest Exercise Time, the notice is effective the next Business Day (if any) in the Exercise Period. If the Buyer does not exercise a Currency Option Transaction, the Transaction may nonetheless be exercised automatically, as discussed in Paragraph 7 below.

**5. *Deliverable Currency Option Transaction.*** A Currency Option Transaction is Deliverable unless the parties specify Non-Deliverable, Cash Settlement or In-the-Money Settlement in their Confirmation (except in the case of Automatic Exercise,

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<sup>4</sup> For a Deliverable Currency Option Transaction, parties may specify either a Call Currency Amount or a Put Currency Amount and the Strike Price.

as discussed in Paragraph 7 below). Pursuant to Section 3.7(a) of the Definitions, in a Deliverable Currency Option Transaction, the Seller pays the Call Currency Amount and the Buyer pays the Put Currency Amount. In the case of Automatic Exercise, the Seller has the discretion to settle the Currency Option Transaction as either a Deliverable or Non-Deliverable Transaction.

**6. *Non-Deliverable Currency Option Transaction.*** In a Non-Deliverable Currency Option Transaction, the Seller pays the Buyer the In-the-Money Amount if that amount is a positive number. The In-the-Money Amount is determined in one of two ways. If the parties do not specify a Settlement Currency (as is typically the case for options involving developed countries' currencies), the Definitions follow the standard settlement formula found in the FEOMA and ICOM. In that formula, the In-the-Money Amount equals the difference between the Settlement Rate and the Strike Price multiplied by the Call Currency Amount or Put Currency Amount, as appropriate. Using that formula, in the case of a Call, the Transaction settles in the Put Currency and in the case of a Put, the Transaction settles in the Call Currency. If, however, the parties specify a Settlement Currency (as is typically the case for options involving emerging market currencies), the Definitions use a new formula whereby the Transaction settles in the Settlement Currency, regardless of whether the Settlement Currency is the Call Currency or the Put Currency. In such a Transaction, parties must also specify the Reference Currency and a Settlement Rate Option or a Settlement Rate (or means of determining the Settlement Rate). As discussed in Paragraphs III.A.5.b and III.A.5.c above, if a Settlement Rate or Settlement Rate Option is not specified, the Settlement Rate for a Non-Deliverable Currency Option Transaction will be the Spot Rate determined by the Calculation Agent. As previously mentioned, the Settlement Rate is determined on the Valuation Date. If parties do not specify a Valuation Date in their Confirmation, the Valuation Date will be deemed to be the Exercise Date (*see* Section III.A.5.a above).

**7. *Automatic Exercise.*** Section 3.6(c) of the Definitions provides that Automatic Exercise is applicable to a Currency Option Transaction. Accordingly, unless the parties specify that Automatic Exercise is not applicable in their Confirmation, a Currency Option Transaction will be deemed exercised (if not exercised previously) if the In-the-Money Amount exceeds the product of (i) one percent of the Strike Price times (ii) the Call Currency Amount or Put Currency Amount, as appropriate. If a Deliverable Currency Option Transaction is exercised automatically, the Seller may either settle the Transaction as a Deliverable Transaction or pay the In-the-Money Amount. This is a new choice not previously included in the 1992 Definitions or the IFEMA or ICOM. The effect of this choice is to preserve, for the benefit of the Buyer, the economics of the Deliverable Transaction, regardless of how such Transaction is settled. If a Non-Deliverable Transaction is exercised automatically, the Seller must pay the In-the-Money Amount to the Buyer.

**8. *Averaging Dates.*** The Averaging Date provisions allow parties to document an "Asian" style Currency Option Transaction or any other Currency Option Transaction that requires the parties to determine the Settlement Rate by averaging the Spot Rate taken on more than one date. All operative provisions relating to Averaging Dates are contained in Section 3.8 of the Definitions, modifying other relevant provisions of the Definitions, as appropriate, whenever averaging is specified as applicable in a Confirmation. In order to take advantage of these averaging provisions, parties must specify the Averaging Dates in their Confirmation. Parties also should consider carefully what the consequence should be if it is impossible to obtain the Spot Rate on an Averaging Date. The Definitions provide that the disrupted Averaging Date is ignored for purposes of calculating the Settlement Rate. If, as a result of this provision, all the

Averaging Dates for a Transaction are ignored (*i.e.*, it is impossible to get a Spot Rate for each Averaging Date), then a Price Source Disruption will be deemed to occur on the final Averaging Date and a Spot Rate will be obtained using the Disruption Fallbacks only for such final Averaging Date. Consequently, pursuant to this provision, parties may lose the averaging aspect of their Transaction. *See* Section III.F.1.c.i below for a discussion of the Price Source Disruption Event.

#### **D. Article 4**

Most of the provisions of Article 4 are contained in Annex A. Sections 4.1 and 4.2 of the Definitions are the only provisions of the Article not in the Annex. Section 4.1 addresses a situation where a Spot Rate for a Transaction cannot be determined because either (i) the price source (such as Reuters or Telerate) referenced in the applicable Settlement Rate Option fails to publish the currency exchange rate due to problems unique to that price source but the same rate is available from other price sources or (ii) the currency exchange rate referenced in the applicable Settlement Rate Option is (a) a rate that is reported, sanctioned, recognized, published, announced or adopted (or other similar action) by a government, (b) the rate ceases to exist and (c) the rate is replaced by a new rate that is reported, sanctioned, recognized, published, announced or adopted (or other similar action) by a government. Section 4.1(a) provides that in the case of the first situation, the Spot Rate for the Transaction will be determined by looking to any one of the other available price sources which actually publishes the relevant rate. Section 4.1(b) provides that in the case of the second situation, the Spot Rate for a Transaction will be determined by looking to a price source that actually publishes the successor rate.

Section 4.2 states that the remaining provisions of Article 4 are published in Annex A. Importantly, that Section provides that unless the parties otherwise agree, they will be deemed to have incorporated Annex A as amended through the Trade Date of the Transaction.

#### **E. Annex A**

As discussed in more detail below, Annex A of the Definitions contains (i) definitions of developed countries' and emerging market currencies, (ii) a table of principal financial centers for each of these currencies, (iii) successor currency provisions (in the event a currency has been lawfully eliminated, converted, redenominated or exchanged) and (iv) Settlement Rate Options that can be utilized to determine the Settlement Rate for Non-Deliverable Transactions involving certain emerging market currencies.

The Definitions at the date of initial publication contained Settlement Rate Options for twenty-one emerging market currencies. However, the Working Group expects to update the Definitions periodically to accommodate the addition of other currencies and rate sources and to reflect changes in market practices and standards. Given these anticipated changes, Annex A was published in a loose-leaf format. Accordingly, parties should specify what version of Annex A of the Definitions is applicable to a Transaction by referencing a date (*e.g.*, "March 1998 version") or an "as amended through" date (*e.g.*, "March 1998 version as amended through September 11, 1998"). Two new rate sources for the Brazilian Real/U.S. Dollar offered rate and one new rate source for the Russian Ruble/U.S. Dollar rate have been added to Annex A (see Appendix B of this User's Guide for those rate definitions and the effective dates of those definitions). Unless otherwise specified, by incorporating the Definitions in a



Confirmation, parties will be deemed to have incorporated Annex A as amended through the Trade Date of the Transaction.

**1. Successor Currency Provisions.** Section 4.3 of the Definitions provides that a currency is deemed to include any lawful successor currency of that currency. This provision addresses the situation where a currency is lawfully eliminated, converted, redenominated or exchanged after the date the parties enter into a Transaction and before the date the Transaction settles. Some market participants argue that such a provision is not necessary because the law of the state that issued the currency (*i.e.*, *lex monetae*) applies with respect to the recognition of a currency as legal tender, as well as the determination of that currency's nominal value. In accordance with *lex monetae*, it lies within each country's exclusive authority to replace its lawful currency with a new currency and to fix the conversion rate for the old currency in relation to new. Such changes should always be recognized when calculating amounts due under a Transaction, regardless of what law governs the Transaction. However, it is not certain that *lex monetae* is recognized in all relevant jurisdictions, particularly in the United States. Accordingly, Section 4.3 explicitly provides for such a result.

Section 4.3 contains an exception to the provision described above for currencies that are substituted or replaced by the euro. That Section provides that the consequences of such substitution or replacement will be determined in accordance with applicable law. The European Union has adopted regulations that address this situation in detail. In addition, certain states in the United States, including New York, California, Illinois, Pennsylvania and Michigan, have adopted laws addressing the continuity of contracts. Parties should ensure that their agreements are governed by the laws of a jurisdiction that has provisions that explicitly address the introduction of the euro or, if the law does not contain such provisions, parties should address the introduction of the euro, when relevant, in their Confirmation.

**2. Settlement Rate Options.** As previously mentioned, one focus of the Working Group was the development of currency spot rate definitions—Settlement Rate Options—that can be utilized to determine a Settlement Rate for certain Non-Deliverable Transactions. Annex A, at the date of its initial publication, contained Settlement Rate Options for twenty-one emerging market currencies referencing some combination of (a) an official government rate, (b) a specific screen page and (c) other publications. Annex A also contains “general” Settlement Rate Options that can be used to determine a rate for any currency, as described below.

The Working Group considered whether to include embedded fallbacks in these Settlement Rate Options in the event that a price source designated by the parties is unavailable.<sup>5</sup> However, the Working Group believed that important regional differences act as an impediment to providing a standard alternative rate source for all Settlement Rate Options. Consequently, each rate source is drafted narrowly, and the parties should specify any alternative rate sources in their Confirmation.

**a. Reference Currency/U.S. Dollar Settlement Rate Options.** Most of the Settlement Rate Options in Annex A refer to currency exchange rates

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<sup>5</sup> As discussed above, Section 4.1 addresses the situation where either (i) a price source is unavailable due to problems specific to a price source rather than ones of general application or (ii) a rate that is reported, sanctioned, recognized, published, announced (or other similar action) by a government ceases to exist and is replaced by a new rate that is reported, sanctioned, recognized, published, announced or adopted (or other similar action) by a government.

expressed as the amount of Reference Currency per U.S. dollar. Consequently, most Settlement Rate Options cannot be utilized for Non-Deliverable Transactions where the Settlement Currency is not U.S. dollars. Nevertheless, parties may choose to use these Settlement Rate Options for such Transactions. One common way to accomplish this would be (i) to obtain the Reference Currency/U.S. dollar exchange rate via the applicable Settlement Rate Option, (ii) obtain a U.S. dollar/Settlement Currency rate based on then currency market rates and (iii) multiply or divide, depending on how the rates are quoted, the rate obtained in clause (i) by the rate obtained in clause (ii) to determine the Reference Currency/(non-USD) Settlement Currency exchange rate. Such formula must be specified in the Confirmation.

**b. General Settlement Rate Options.** Section 4.5(e) contains Settlement Rate Options that allow parties to obtain a currency exchange rate (i) based on dealer quotations, (ii) implied from (a) the prices of local shares quoted in local currency and the price of American Depositary Receipts quoted in U.S. dollars or (b) the prices of local debt securities quoted in the Reference Currency and in the Settlement Currency, (iii) resulting from mutual agreement or (iv) as determined by the Calculation Agent. Except for the rate in (ii)(a) above, these Settlement Rate Options are each quoted in terms of the amount of Reference Currency per one unit of Settlement Currency and therefore can be utilized for Transactions that settle either in U.S. dollars or in another currency.

As explained below, certain of these Settlement Rate Options contain terms for which the parties may specify meanings in their Confirmation. The parties do not have to specify meanings for any of these terms for the Settlement Rate Options to be operable because the Definitions either contain presumed meanings for such terms or rely on the Calculation Agent to make the relevant selection.

**(i) Currency-Implied Rate (ADR).** If “Currency-Implied Rate (ADR)” is the Settlement Rate Option applicable to a Transaction, then the Spot Rate for that Transaction will be the Reference Currency/U.S. dollar rate determined from the prices of local shares quoted in Reference Currency and the price of American Depositary Receipts quoted in U.S. dollars. A rate will be determined pursuant to this Settlement Rate Option if at least one Reference Dealer provides a quotation. For this Settlement Rate Option, parties may specify (i) the Specified Company (*i.e.*, the issuer of the local shares), (ii) the four Reference Dealers from whom quotations should be obtained and (iii) the Specified Time (*i.e.*, the time quotations should be obtained from the Reference Dealers). If parties do not specify this information in their Confirmation, then the Calculation Agent will make the relevant selections.

**(ii) Currency-Implied Rate (Local Asset).** If “Currency-Implied Rate (Local Asset)” is the Settlement Rate Option applicable to a Transaction, then the Spot Rate for that Transaction will be determined from the price of a local debt security quoted in Reference Currency and the price of that debt security quoted in the Settlement Currency. A rate will be determined pursuant to this Settlement Rate Option if at least one Reference Dealer provides a quotation. For this

Settlement Rate Option, parties may specify (i) the Local Asset (*i.e.*, a local debt security for which prices are available in the Reference Currency and in the Settlement Currency), (ii) the four Reference Dealers from whom quotations should be obtained, (iii) the Specified Amount (*i.e.*, the amount of local assets for which quotations should be obtained) and (iv) the Specified Time (*i.e.*, the time quotations should be obtained from the Reference Dealers). If parties do not specify this information in their Confirmation, then the Calculation Agent will make the relevant selections except with respect to the Specified Amount. The Definitions presume that the Specified Amount equals the Reference Currency Notional Amount. Therefore, unless the parties otherwise agree, the Calculation Agent will obtain quotations from Reference Dealers for an amount of local assets whose face value equals the Reference Currency Notional Amount.

**(iii) *Currency-Reference Dealers.*** If “Currency-Reference Dealers” is specified (or deemed specified) as the Settlement Rate Option applicable to a Transaction, then the Spot Rate for that Transaction will be determined from quotations obtained from Reference Dealers. A rate will be determined pursuant to this Settlement Rate Option if at least one Reference Dealer provides a firm quotation of its rate.

“Currency-Reference Dealers” will be applicable to a Non-Deliverable Transaction if the parties specified it as the Settlement Rate Option in their Confirmation or if it is impossible to obtain a Spot Rate on the Valuation Date due to the occurrence of a Price Source Disruption (which automatically applies to a Non-Deliverable Transaction unless the parties otherwise specify) or an Illiquidity Disruption Event. In such a circumstance, the Definitions presume that the rate will be determined from dealer quotations in accordance with this Settlement Rate Option. Accordingly, in every Non-Deliverable Transaction, parties should carefully consider whether they wish to override the presumptions discussed below.

For this Settlement Rate Option, parties may specify (i) the four Reference Dealers from whom quotations should be obtained, (ii) the Specified Office (*i.e.*, the on-shore or off-shore branch or office of the Reference Dealer from which a quotation should be obtained), (iii) the Specified Amount (*i.e.*, the amount of Reference Currency for which quotations should be obtained), (iv) the Specified Rate (*i.e.*, bid, offer or mid-market) and (v) the Specified Time (*i.e.*, the time quotations should be obtained from the Reference Dealers). If parties do not specify this information in their Confirmation, then the Calculation Agent will make the relevant selections except for the Specified Office, the Specified Amount and the Specified Rate.

The Definitions presume, with two exceptions, that the Specified Office is an on-shore office in the country for which the Reference Currency is the legal tender. If either of the two exceptions is relevant, then the Specified Office will be an off-shore branch or office selected by the Calculation Agent. The first exception is relevant only if the Calculation Agent cannot obtain a quotation from the local office of each of the four Reference Dealers due to the occurrence of a Disruption Event

applicable to a Transaction. The second exception is relevant only if the parties could not obtain an off-shore currency exchange rate pursuant to the Settlement Rate Option applicable to a Transaction and “Currency-Reference Dealers” is specified as a fallback for such Settlement Rate Option. The Working Group believed that this second exception was necessary to best preserve the economics of the Transaction because, in certain circumstances, there may be a significant divergence between the on-shore and off-shore rates.

The Definitions presume that the Specified Amount equals the Reference Currency Notional Amount. Therefore, unless the parties otherwise agree, the Calculation Agent will obtain quotations from Reference Dealers for an amount of currency equal to the Reference Currency Notional Amount. Parties should carefully consider whether this presumption should apply on a transaction-by-transaction basis. Currently, in certain types of Non-Deliverable Transactions, market practice is to obtain quotations for a “block transaction” (e.g., five million units of the local currency) rather than for the amount of local currency involved in the particular Transaction. In such a situation, parties should specify in their Confirmation that the Specified Amount equals the amount for which dealers typically provide quotations. In addition, dealer quotations may be used as a fallback for a rate obtained from a screen page (such as Reuters or Telerate), where parties may not contemplate obtaining a rate for a particular amount of currency. In such a situation, parties may choose to specify that quotations should be obtained for the Reference Currency equivalent of US \$1.

If parties do not specify whether the dealer quotations should be a bid rate, offer rate or mid-market rate, the Definitions provide that the Calculation Agent will obtain quotations for the average of the Reference Currency/Settlement Currency bid and offer rates.

c. ***Defining a Settlement Rate Option in a Confirmation.*** Parties may specify a Settlement Rate Option in their Confirmation that is not set forth in Annex A. In particular, certain market participants currently obtain a currency exchange rate from a Reuters RIC screen page such as “HKD=”, “INR=” or “THB=”. These screens publish a quote from a single institution (although the particular institution providing a quotation may change from moment to moment). As such, these screen pages may not reflect a broad sampling of the market. Nevertheless, some market participants rely on these screen pages to obtain currency exchange rates, oftentimes excluding the highest and lowest quotations and averaging the rates shown on the screen at a particular time.

## **F. Disruption Events and Disruption Fallbacks**

As previously mentioned, another focus of the Working Group’s efforts has been the development of definitions of Disruption Events and Disruption Fallbacks that may be utilized in certain FX and Currency Option Transactions such as those involving emerging market currencies. By incorporating Disruption Events in a Transaction, parties can allocate certain event risks (such as political risks or other disruptions in the market) by providing an agreed upon method for determining a rate or settling a Transaction upon the occurrence of such events (these methods are called “Disruption Fallbacks”). Generally, such event risks can be grouped into the following four

categories: (i) price source risks, (ii) convertibility and transferability risks, (iii) sovereign risks and (iv) other risks. These risks, and consequently the Disruption Events and Disruption Fallbacks, may apply to one or both of the currencies in Deliverable and Non-Deliverable FX and Currency Option Transactions. However, parties should be aware that the Definitions were drafted with the intention that the Disruption Events and Disruption Fallbacks would apply to only one currency in a Transaction. Accordingly, if parties would like such events and fallbacks to apply to both currencies, they should carefully consider the Definitions and whether, as a result of this choice, any modifications need be made.

The Disruption Events and Disruption Fallbacks were given a great deal of attention by the Working Group, as they involve a number of issues on which no uniform market practice has developed. Where the Working Group was unable to reach a consensus or where the approach to an issue would vary greatly in differing circumstances or countries, the Definitions leave it to the parties to elect the applicable provisions in their Confirmation to reflect their commercial intention. These elections increase the complexity of the Definitions, but the Working Group believed that this complexity reflects the diverse practices in the foreign exchange markets.

**1. Disruption Events.** Generally, the Definitions are structured to enable parties to choose which Disruption Events will apply to a Transaction from a menu of choices. The Definitions, however, presume that one Disruption Event, Price Source Disruption, applies to all Non-Deliverable Transactions. *Accordingly, this event will apply to a Non-Deliverable Transaction unless the parties specify in their Confirmation that it is inapplicable.* This presumption was made because all Non-Deliverable Transactions are subject to price source unavailability risk and thus it was deemed appropriate that such event apply to all Non-Deliverable Transactions.

None of the Disruption Events is presumed to apply to Deliverable Transactions. Therefore, for a Deliverable Transaction, parties must specify an Event Currency (as described below) and the applicable Disruption Events in their Confirmation for the provisions of Article 5 to be applicable to such a Transaction. Disruption Events are specified in a Confirmation by listing those events that the parties want to apply to a Transaction followed by the word “Applicable”. (See Exhibit II-E of the Definitions).

**a. Interaction of Disruption Events with illegality, impossibility, act of state and force majeure provisions of certain master agreements.** The ISDA Master Agreements, FEOMA, IFEMA and ICOM contain provisions to address the occurrence of an event that makes it illegal or, in some cases, impossible<sup>6</sup> for a party to fulfill its obligations under such agreement. Section 5.1(c) of the Definitions addresses the case where an event occurs that constitutes or gives rise to both an illegality, impossibility, act of state or force majeure and a Disruption Event applicable to a Transaction. That Section provides that such an event will be treated as a Disruption Event for purposes of the Definitions and the relevant master agreement. It is important to note that such event constitutes a Disruption

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<sup>6</sup> The ISDA Master Agreement does not include a Termination Event for “Impossibility”. Some parties, however, decide to include a Termination Event addressing “Impossibility” in the Schedule to their ISDA Master Agreement, in order to address the occurrence of a natural or man-made disaster, armed conflict, act of terrorism, riot, labor disruption, or any other circumstance beyond a party’s control which would make it impossible for a party to perform its obligations under the relevant agreement. For a more detailed analysis of the issues surrounding the inclusion of such a provision, see Section VIII of the User’s Guide to the 1992 ISDA Master Agreements.

Event for purposes of the Definitions immediately upon its occurrence. The Definitions therefore would override any early termination provisions in the relevant master agreement. Instead, the Definitions provide that the Transaction continues and, if such event is continuing on the Valuation Date or Settlement Date (as applicable), the Disruption Fallbacks will be automatically triggered. Consequently, this provision will result in the application of Disruption Fallbacks to the Transaction rather than the application of the early termination provisions addressing the illegality, impossibility, act of state or force majeure.

Unlike the ISDA Master Agreement, provisions of the 1997 IFEMA, ICOM and FEOMA, and of certain other versions of these agreements, permit early termination of a transaction in the case of a potential impossibility or illegality. Accordingly, Section 5.1(c) of the Definitions is also intended to address the case where an event may occur which would constitute both an illegality, impossibility, act of state or force majeure and a Disruption Event applicable to a Transaction.

Section 5.1(c), however, is not intended to have any further effect on the operation of the master agreement. In particular, a party's choice of a Disruption Event as applicable to a Transaction, or lack thereof, should not create any negative presumption or negative inference regarding the operative provisions of the relevant ISDA Master Agreement, FEOMA, IFEMA or ICOM with respect to any Illegality or Impossibility in the case of an ISDA Master Agreement or any force majeure, act of state, illegality or impossibility in the case of the FEOMA, IFEMA or ICOM in circumstances other than those described above.

**b. *Event Currency.*** As mentioned above, the purpose of the Disruption Events and Disruption Fallbacks is to allow parties to allocate certain event risks associated with a currency. The term "Event Currency" is used to describe the currency with these associated risks. In the case of a Non-Deliverable Transaction, the Definitions assume that the currency specified as the Reference Currency (which, as discussed in Section III.A.5.d above, is the currency whose relative value determines the payment amount in a Non-Deliverable Transaction but which is not the currency in which the Transaction settles) is the Event Currency. However, in certain Non-Deliverable Transactions, the parties may choose to settle in the currency that has such event risks associated with it. In such a case, the parties should specify in the Confirmation that the Event Currency is the Settlement Currency.

The Definitions do not contain a presumption for the Event Currency for purposes of a Deliverable Transaction. Accordingly, when parties specify Disruption Events for Deliverable Transactions, they must also specify an Event Currency in the Confirmation for the provisions of Article 5 to be operable.

**c. *Menu of Disruption Events.*** Section 5.1(d) of the Definitions contains definitions of thirteen different Disruption Events. These events can be grouped into the following categories: (i) events related directly to price source availability (Price Source Disruption, Illiquidity, Dual Exchange Rate and Price Materiality), (ii) events related to the inconvertibility or non-transferability of a currency (General Inconvertibility, Specific Inconvertibility, General Non - Transferability, Specific Non-Transferability, Inconvertibility/Non-Transferability), (iii) events related to some other government or issuer action (Benchmark Obligation Default, Governmental

Authority Default, Nationalization) and (iv) other events (Material Change in Circumstance). The Definitions allow parties to designate any of these Disruption Events in their Confirmation as applicable to a Transaction. Set forth below is a summary description of each of these events.

(i) **Price Source Disruption.** *Price Source Disruption will apply to a Non-Deliverable Transaction unless parties specify in their Confirmation that it is inapplicable.*<sup>7</sup> A Price Source Disruption Event occurs when it becomes impossible to obtain the Settlement Rate on the Valuation Date (or, if different, the date on which rates for that Valuation Date would, in the ordinary course, be published or announced by the relevant price source). If the relevant price source publishes or announces its rate this event will not be triggered, even if the Transaction may not be settled at that rate or a rate may not be obtained for the full amount of local currency involved in the Transaction.

A price source designated by the parties may be unavailable because an unscheduled bank closure is declared on short notice in the relevant country. Ordinarily, if the Valuation Date falls on an “official” bank holiday, it will be adjusted back to the first preceding Business Day (see Section III.A.5.a above). However, as discussed in Section III.A.1 above, the Valuation Date will not be adjusted if commercial banks would have been open in the relevant jurisdiction but for (i) the occurrence of an applicable Disruption Event or (ii) the closure of banks caused by a banking moratorium or other similar event related to an applicable Disruption Event. In the case where an unscheduled bank closure is declared on short notice, parties to a Transaction may be unable to properly hedge their exposure. In such a situation, it is not always clear whether the unavailability of the price source should be treated as a Disruption Event or whether the Valuation Date should be adjusted in accordance with the applicable Business Day Convention. Certain members of the Working Group argued that if the parties to a Transaction have at least one week advance notice of the unscheduled closure, then they should be able to properly hedge their positions so that the fallbacks for a Price Source Disruption should not be triggered. These members also believed that an unscheduled closure that is announced and occurs on the same day should trigger a Price Source Disruption because their positions cannot be properly hedged. However, there is no bright line as to when such a circumstance should or should not constitute a Price Source Disruption Event. Therefore, parties may desire to document their agreement on a time frame for when declaration of an unscheduled closure of banks constitutes a Disruption Event, or otherwise they may have to negotiate resolutions to such situations on a transaction-by-transaction basis.

(ii) **Illiquidity.** The Illiquidity Disruption Event addresses the situation where, with respect to Non-Deliverable Transactions, it becomes impossible to obtain a firm quote of the Settlement Rate in the Minimum Amount (either in one transaction or a commercially reasonable number

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<sup>7</sup> With respect to Non-Deliverable Transactions, Section 5.1(e)(iv) of the Definitions provides that if one or more Disruption Events are specified in a Confirmation, then Price Source Disruption and the Disruption Events specified will apply to such Transactions.

of transactions that, taken together, total the Minimum Amount). Parties can allow additional days after the Valuation Date to obtain these quotes by specifying an “Illiquidity Valuation Date” in their Confirmation, which is the date by which all quotes must be obtained. The Minimum Amount is the amount specified in the Confirmation or, if the parties do not specify an amount, it is presumed to be the Reference Currency Notional Amount.

**(iii) Dual Exchange Rate.** A Dual Exchange Rate Disruption Event occurs when, after the Trade Date, a currency exchange rate (such as a government fixing rate) referenced in the Settlement Rate Option applicable to a Transaction splits into dual or multiple currency exchange rates and such split is continuing on the Valuation Date. There was considerable discussion in the Working Group as to whether this event should be broadened to include a situation where a new currency exchange rate is introduced that becomes the commercially viable rate (but does not replace the original rate). However, most Working Group members believed that such a situation is better addressed as a Price Materiality Disruption Event and therefore should not constitute a Dual Exchange Rate Disruption Event, even if the newly introduced rate becomes the rate most market participants use to settle their Non-Deliverable FX or Currency Option Transactions. If parties want to protect against the risk that the rate referenced in the applicable Settlement Rate Option is significantly different than such new rate, parties may choose to have Price Materiality applicable to the Transaction and specify that the Secondary Rate should be determined using the Settlement Rate Option “Currency-Wholesale Market” or “Currency-Reference Dealers”, as further discussed in Paragraph (iv) below.

If a Dual Exchange Rate Disruption Event occurs, then it may be unclear at what rate the relevant Transaction can settle. Oftentimes when a dual exchange rate is introduced, a party’s access to a particular rate is restricted based on the type of activity (e.g., one rate for current account activity and another rate for capital account activities) and/or the residence of the party. It is possible that one party to the Transaction may have access to one rate and the other party to the Transaction may have access to a different rate. Accordingly, rather than have a presumed fallback to the Settlement Rate Option “Currency-Reference Dealers”, as is the case with the other events addressing price source risks, Section 5.2(e)(i)(F) of the Definitions provides that if a Dual Exchange Rate occurs, the Settlement Rate will be determined pursuant to the Settlement Rate Option specified for such purpose. If none is specified, then the Calculation Agent will determine the Settlement Rate.

**(iv) Price Materiality.** As mentioned above, it is possible that the parties to a Transaction may be able to obtain the Settlement Rate but are unable to trade at such rate because it is not reflective of the rate at which trades are being settled in the market. The Price Materiality Disruption Event is triggered when, due to political or market events, the Settlement Rate (calculated in accordance with the applicable Settlement Rate Option) is not reflective of the “market” rate obtained from dealer quotations or determined by the Calculation Agent for the wholesale currency market or obtained from another source. Parties must specify in



their Confirmation (A) how the “market” rate (*i.e.*, the Secondary Rate) is to be determined and (B) by what percentage that rate must differ from the settlement rate in order for the event to be triggered (*i.e.*, the Price Materiality Percentage). If parties do not specify how the Secondary Rate is to be determined, such rate will be determined from dealer quotations in accordance with the provisions of the “Currency-Reference Dealers” Settlement Rate Option.

**(v) *General and Specific Inconvertibility and Non-Transferability.*** The Inconvertibility and Non-Transferability Disruption Events distinguish between general market disruptions and market disruptions that affect the parties (or a defined class of entities) and their ability to settle the trade. This distinction has been made in order to tailor the Definitions to the level of protection parties require. General Inconvertibility and Non-Transferability cover inconvertibility and non-transferability events that not only affect a party’s ability to perform, but also affect any hedges. Specific Inconvertibility and Non-Transferability may or may not address events that affect hedges. If parties do not specify a Relevant Class (as discussed below) for Specific Inconvertibility or Non-Transferability, then such events are narrower, only covering events that affect a party’s ability to perform. If, however, parties are concerned about events that make it impossible for a certain category of entities to convert or transfer a currency, they can elect Specific Inconvertibility or Non-Transferability and specify a Relevant Class in their Confirmation. Such specification will enable parties to protect against events with more limited applicability than the General Inconvertibility and Non-Transferability events.

The Inconvertibility and Non-Transferability Events are not linked to government action or any other particular action such as the declaration of war or the occurrence of other hostile acts. Instead, the Disruption Events focus on the effect—the inability to convert or transfer—rather than any particular cause. Importantly, however, the events would not be triggered by the imposition of a tax or similar event that merely makes such conversion or transfer extremely costly or economically impracticable. Some market participants suggested that the events should be triggered by such circumstances. However, most members of the Working Group agreed that the events should be more narrow and should be triggered only if it is impossible to convert or transfer, not simply if it is more expensive to do so.

Settlement Postponement is a presumed Disruption Fallback for the General and Specific Inconvertibility, General and Specific Non-Transferability and Inconvertibility/Non-Transferability Disruption Events. This fallback provides that the Transaction will be postponed for the Maximum Days of Disruption. The Definitions do not contain a presumption for the Maximum Days of Disruption. Therefore, if any of these events is specified as applicable to a Transaction and parties do not want such Transaction to be postponed indefinitely, they should specify the Maximum Days of Disruption in their Confirmation.

**(1) *General and Specific Inconvertibility.*** A General Inconvertibility Disruption Event is triggered upon the occurrence

of any event that makes it generally impossible to convert the Event Currency into the Non-Event Currency, whereas the Specific Inconvertibility Disruption Event is triggered if an event affects only the ability of a party (or group of entities—the Relevant Class) to settle the trade. If parties want to address the risk that, rather than a general restriction or one specific to a party, a restriction is imposed on a certain class of entities, they must specify in their Confirmation (i) that the Specific Inconvertibility Disruption Event applies to the Transaction and (ii) the entities that constitute the Relevant Class. The Relevant Class may be defined in any way the parties choose, including by reference to the location of the organization or domicile of entities (*e.g.*, the Relevant Class means any entities organized or domiciled in the jurisdictions in which the parties to the Transaction are organized or domiciled).

Unlike the General Inconvertibility Disruption Event, the Specific Inconvertibility Disruption Event includes the concept of a Minimum Amount. Unless the parties otherwise specify, the Minimum Amount is the Event Currency equivalent of US \$1. Accordingly, a Specific Inconvertibility Disruption Event effectively will be triggered only upon the occurrence of an event that makes it impossible for a party or Relevant Class to convert the Event Currency into the Non-Event Currency in the local jurisdiction (*i.e.*, the jurisdiction for which the Event Currency is the lawful currency).

The Minimum Amount concept may be utilized to address the risk that parties will not be able to convert or transfer the full amount of currency to be delivered under a Transaction—*i.e.*, to address “execution risk”. In such a case, parties should specify that the Minimum Amount is either the Reference Currency Notional Amount (if the Reference Currency is the Event Currency) or the Settlement Currency Notional Amount (if the Settlement Currency is the Event Currency).

**(2) *General and Specific Non-Transferability.*** A General Non-Transferability Disruption Event is the occurrence of an event that generally makes it impossible to (i) transfer the local currency between accounts in the local currency jurisdiction or (ii) repatriate the non-local currency. The Non-Transferability Disruption Events do not apply to the transfer of local currency out of the local jurisdiction because such action is currently prohibited in many emerging market jurisdictions.

The Specific Non-Transferability provisions are triggered only if an event affects the ability of a party (or group of entities—the Relevant Class) to do either (i) or (ii) above. As is the case with the Specific Inconvertibility Disruption Event, if parties want to address the risk that, rather than a general restriction or one specific to a party, a restriction is imposed on a certain class of entities, they must specify in their Confirmation (i) that the Specific Non-Transferability Disruption Event applies

to the Transaction and (ii) the entities that constitute the Relevant Class.

(3) ***Inconvertibility/Non-Transferability.*** If parties want a Disruption Event to occur only if (i) it is generally impossible and impossible for a party to the Transaction to convert the local currency into the non-local currency and (ii) generally impossible to transfer the local currency between accounts in the local currency's jurisdiction or to repatriate the non-local currency and impossible for a party to a Transaction to do so, then they should specify "Inconvertibility/Non-Transferability" as a Disruption Event applicable to their Transaction. Parties should be aware, however, that if either (i) or (ii) above is not applicable, then a Disruption Event will not occur.

(vi) ***Benchmark Obligation Default.*** The provisions of this event are similar to the provisions set forth in the ISDA Confirmation of OTC Credit Swap Transaction. This event is triggered upon the occurrence of a default with respect to a Benchmark Obligation, including failure to pay principal or interest, or a moratorium, repudiation or rescheduling of principal or interest payments. The parties must specify the Benchmark Obligation(s) in the Confirmation for this event to be operative.

Pursuant to sub-clause (C) of this event, one circumstance that would trigger a Benchmark Obligation Default is the amendment or modification of the payment terms without the consent of all holders of such Benchmark Obligation. It may be the case that the provisions of such Benchmark Obligation provide that a specified percentage (such as 50% or 75%) of security holders can bind all security holders with respect to amendments or modifications. Nonetheless, the Working Group believed that an amendment or modification of the payment terms should trigger this event because the Benchmark Obligation was used to hedge a party's exposure in a Transaction.

Section 5.2(e)(i)(B)(1) provides that the first presumed Disruption Fallback for this Disruption Event is "Local Asset Substitute-Gross", where the local asset delivered is the Benchmark Obligation subject to that default, and the next presumed Disruption Fallback is Settlement Postponement. If parties do not override these presumptions, in addition to specifying that Benchmark Obligation Default is applicable to a Transaction, parties also should specify the following information: (i) whether, for settlement purposes, the value of the Benchmark Obligations should be based on the face value or market value (*i.e.*, the Specified Value) and (ii) the maximum days that settlement should be postponed (*i.e.*, the Maximum Days of Disruption).

(vii) ***Governmental Authority Default.*** The provisions of this event also are similar to the provisions set forth in the ISDA Confirmation of OTC Credit Swap Transaction. This event is triggered upon the occurrence of a default by the relevant governmental authority with respect to any security it issues or guarantees or any indebtedness for borrowed money it incurs or guarantees, including failure to pay principal

or interest, or a moratorium, repudiation or rescheduling of principal or interest payments. For the reasons mentioned in (i) above, any modification of the payment terms without the consent of all holders of such obligation would trigger this event.

This Disruption Event is triggered by the occurrence of a default with respect to any governmental obligation. Section 5.2(e)(i)(B)(1) of the Definitions provides that if a Governmental Authority Default occurs, the presumed Disruption Fallback is “Local Asset Substitute-Gross” where the local asset delivered is any governmental obligation subject to that default. If a party wants to buy protection for a specific governmental obligation, the party instead may use the Benchmark Obligation Default Disruption Event and specify the relevant governmental obligation as the Benchmark Obligation. As discussed above, if a Benchmark Obligation Default occurs, the local asset delivered pursuant to the provisions of Section 5.2(e)(i)(B)(1) will be the specified governmental obligation.

The next presumed Disruption Fallback in Section 5.2(e)(i)(B)(2) for the Governmental Authority Default Disruption Event is Settlement Postponement. If parties do not override these presumptions, in addition to specifying that Governmental Authority Default is applicable to a Transaction, they also should specify the following information: (i) whether, for settlement purposes, the value of the governmental obligations should be based on the face value or market value (*i.e.*, the Specified Value) and (ii) the maximum days that settlement should be postponed (*i.e.*, the Maximum Days of Disruption).

**(viii) *Nationalization.*** A Nationalization Disruption Event will occur if a party’s (or certain designated affiliate’s) local assets are confiscated by a Governmental Authority. As is the case with the other Disruption Events, if such an event occurs and is continuing on the Settlement Date, the Disruption Fallback will be triggered automatically. Some market participants argued that the fallbacks should be triggered only at the option of the party whose assets are seized. However, most of the Working Group believed that the “automatic” triggering rule should not be changed for this Disruption Event.

Settlement Postponement is the primary Disruption Fallback presumed for this Disruption Event. This fallback provides that the Transaction will be postponed for the Maximum Days of Disruption. The Definitions do not contain a presumption for the Maximum Days of Disruption. Therefore, if this event is specified as applicable to a Transaction and parties do not want such Transaction to be postponed indefinitely, they should specify the Maximum Days of Disruption in their Confirmation.

**(ix) *Material Change in Circumstance.*** A Material Change in Circumstance Disruption Event occurs when an event (other than the Disruption Events included in the Definitions) in the Event Currency Jurisdiction beyond the control of the parties makes it impossible (a) for a party to fulfill its obligations under the Transaction and (b) generally to fulfill obligations similar to such party’s obligations under that

Transaction. This Disruption Event would address the occurrence of an event that is not one of the twelve other Disruption Events listed in the Definitions and that is not specifically contemplated or available for election by the parties under the Definitions. Parties may desire to select this event if they want to provide for Disruption Fallbacks as an alternative to termination and close-out of Transactions or to negotiating resolutions on a case-by-case basis.

The primary Disruption Fallback presumed for this event is that the parties will negotiate to agree on an alternative basis for determining the Settlement Rate or for settling the Transaction, as appropriate. If no agreement is reached by the Maximum Days of Disruption, the Transaction will terminate in accordance with the No Fault Termination Disruption Fallback. The Definitions do not contain a presumption for the Maximum Days of Disruption. Therefore, parties should specify such information in their Confirmation.

**d. *Existence of a Disruption Event.*** All Disruption Events are phrased objectively and therefore do not rely on a specific party's determination of their existence. However, parties may choose to have the Calculation Agent responsible for determining the existence of a Disruption Event by specifying "Calculation Agent Determination of Disruption Event" in their Confirmation.

As set forth in Section 5.1(f) of the Definitions, the Disruption Fallbacks applicable to a Disruption Event will be automatically triggered if such Disruption Event occurs after the Trade Date and is continuing on the date set forth below for that Disruption Event:

(i) in the case of Dual Exchange Rate, Price Source Disruption and Price Materiality, on the Valuation Date (or, if different, the date on which rates for that Valuation Date would, in the ordinary course, be published or announced);

(ii) in the case of Illiquidity, on the Illiquidity Valuation Date if one is specified, or if such a date is not specified, then on the Valuation Date (or, if different, the date on which rates for that Valuation Date would, in the ordinary course, be published or announced);

(iii) in the case of Material Change in Circumstance, on the Valuation Date (or, if different, the date on which rates for that Valuation Date would, in the ordinary course, be published or announced) or the Settlement Date; and

(iv) in the case of all other Disruption Events, on the Settlement Date.

Section 5.1(f) provides that for purposes of Article 5, the Valuation Date and Settlement Date will not be adjusted in accordance with the applicable Business Day Convention if a banking moratorium (or other similar event) related to an applicable Disruption Event is declared in the relevant jurisdiction (*i.e.*, the jurisdiction for which the Event Currency is the legal tender). Consequently, the Disruption Fallbacks would be triggered, regardless of whether a banking moratorium had been declared. Absent this rule, the effect of a banking moratorium (or similar event) would be to adjust the Valuation Date or the Settlement Date to either the next preceding or following Business Day—*i.e.*, a day commercial banks are open in the relevant jurisdiction or effecting delivery of

the currency to be delivered—which would postpone the triggering of the applicable Disruption Fallbacks (see Section III.A.1 above).

**e. Presumptions Regarding the Applicability of Disruption Events to a Transaction.** The only Disruption Event that is presumed to apply to a Non-Deliverable Transaction is Price Source Disruption. *This event will apply to a Non-Deliverable Transaction unless the parties specify in their Confirmation that it is inapplicable (regardless of whether one or more other Disruption Events are specified in the Confirmation as applicable to the transaction (see Section 5.1(e)(iv) of the Definitions)).* No Disruption Events are presumed to apply to a Deliverable Transaction.<sup>8</sup>

**2. Disruption Fallbacks.** As mentioned above, the Disruption Fallbacks are automatically triggered if a Disruption Event occurs and is continuing on the Valuation Date or the Settlement Date, as applicable. They provide an alternative means of determining the Settlement Rate or an alternate method of settling the Transaction. Disruption Fallbacks are event-specific—they should be specified for a particular Disruption Event. Disruption Fallbacks apply if they are specified in a Confirmation as applicable with respect to a particular Disruption Event or if they are deemed to apply pursuant to Section 5.2(e) of the Definitions. *The presumed Disruption Fallbacks in Section 5.2(e) will apply to a Transaction only if no Disruption Fallbacks are specified in the Confirmation for a particular Disruption Event.* If none of the applicable Disruption Fallbacks (whether presumed or specified) provides the parties with a method of settling the Transaction, the Transaction will terminate in accordance with the provisions of the “No Fault Termination” Disruption Fallback. Parties, however, should be aware that in certain circumstances they may have difficulty determining the necessary valuations for this fallback.

**a. Assignment of Claim.** The Assignment of Claim Disruption Fallback is relevant only in the event of a Nationalization Disruption Event. Pursuant to the provisions of this fallback, the nationalized party will either assign to the other party to the Transaction its claim against the Governmental Authority or, if such assignment is not permitted under the relevant law, transfer to such party a beneficial interest in its claim. The amount of the claim to be assigned or beneficial interest to be transferred is an amount equal to the Event Currency Amount as defined in Section 5.4(d) of the Definitions. This Disruption Fallback is specified as a fallback for the Nationalization Disruption Event in Section 5.2(e)(i)(C) of the Definitions.

**b. Calculation Agent Determination of Settlement Rate.** The Calculation Agent Determination of Settlement Rate Disruption Fallback is relevant for Non-Deliverable Transactions where it is impossible to determine the Settlement Rate on the Valuation Date (or, if different, the date on which rates for that Valuation Date would, in the ordinary course, be published or announced by the relevant price source). Pursuant to the provisions of this fallback, the Calculation Agent would determine the Settlement Rate. This Disruption Fallback is presumed to be a fallback for the Illiquidity, Price Source Disruption and Dual Exchange Rate Disruption Events (see Sections 5.2(e)(i)(E) and (F) of the Definitions).

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<sup>8</sup> For a Deliverable Transaction, in addition to the applicable Disruption Events, parties must specify the Event Currency in their Confirmation in order for the provisions of Article 5 to be operable.

c. ***Deliverable Substitute.*** The Deliverable Substitute Disruption Fallback is relevant only for Non-Deliverable Transactions. This fallback provides that the Transaction will settle as if it were a Deliverable Transaction.

d. ***Escrow Arrangement.*** Pursuant to the provisions of the Escrow Arrangement Disruption Fallback, each party makes its required payment into escrow. This amount, plus the interest earned on this amount, is delivered when the Disruption Event ceases to exist. If, however, the Disruption Event continues to exist for the “Maximum Days of Disruption” (as specified by the parties in their Confirmation), then the party obligated to deliver the currency that is not subject to the Disruption Event (*i.e.*, the hard currency or Non-Event Currency) must deliver the amount payable by it, plus interest. The party obligated to pay the currency subject to the Disruption Event must deliver the amount payable by it, plus interest, only when the Disruption Event ceases to exist. The Definitions do not contain a presumption for the Maximum Days of Disruption and, therefore, such information should be specified in the Confirmation. The party obligated to deliver the Non-Event Currency should carefully consider the credit implications of specifying the Maximum Days of Disruption.

e. ***Fallback Reference Price.*** This Disruption Fallback provides that the Calculation Agent will determine the Settlement Rate pursuant to the first alternate Settlement Rate Option specified as the Fallback Reference Price in the Definitions or in the Confirmation. In the case of the Illiquidity, Price Source Disruption and Price Materiality Disruption Events, “Currency-Reference Dealers” is presumed to be such Settlement Rate Option (*see* Section 5.2(e) of the Definitions). *See* Section III.E.2.b.iii above for a complete discussion of the “Currency-Reference Dealers” Settlement Rate Option.

f. ***Local Asset Substitute-Gross/Local Asset Substitute-Net.*** The Local Asset Substitute-Gross Disruption Fallback provides that if the Event Currency is the Reference Currency, the seller of the Reference Currency will deliver assets denominated in the Event Currency (“Benchmark Obligations”) whose value equals the Reference Currency Notional Amount to the buyer of the Reference Currency and the buyer will deliver an amount of Settlement Currency equal to the Notional Amount to the seller of the Reference Currency as more particularly provided for in Section 5.3(a) of the Definitions. The Local Asset Substitute-Net Disruption Fallback provides that in a Non-Deliverable Transaction, the party obligated to pay the Settlement Currency Amount or the In-the-Money Amount will instead deliver Benchmark Obligations with a value equal, in the typical case, to the local currency equivalent of the Settlement Currency Amount or In-the-Money Amount.

For both Disruption Fallbacks, parties must specify in their Confirmation whether the value of the Benchmark Obligations is based on face value or market value by specifying either as the “Specified Value”. In most cases, parties must also specify the asset that is the “Benchmark Obligation”. However, Section 5.2(e)(i)(B)(1) of the Definitions provides that the Benchmark Obligation delivered must be, in the case of a (i) Benchmark Obligation Default, the Benchmark Obligation subject to that default and (ii) Governmental Authority Default, a governmental obligation subject to that default.

Section 5.3 of the Definitions contains additional provisions relating to the delivery of Benchmark Obligations. In particular, Section 5.3(a) of the

Definitions provides that on the Settlement Date the party obligated to deliver the Benchmark Obligations must initiate delivery and the Transaction must settle (for good value) on the first day a sale or other transfer of such Benchmark Obligations would customarily take place (the “Physical Settlement Date”) and the other party will pay the amount payable by it, if any, as set forth in Section 5.2(c)(vi) of the Definitions.

Section 5.3(b) of the Definitions addresses the situation where it is impossible or illegal for the relevant party to deliver the Benchmark Obligations on the Physical Settlement Date. In such a case, the Transaction will settle in accordance with the next applicable Disruption Fallback. Parties may, however, choose to override this presumption in certain trades by specifying in the Confirmation that in the event of an illegality or impossibility the relevant party will transfer a beneficial interest in the Benchmark Obligations to the other party.

Section 5.3(c) of the Definitions provides that the party obligated to deliver, or take delivery of, the Benchmark Obligations may designate any of its affiliates to perform its obligations. Section 5.3(d) specifies that the party who would bear the cost of a stamp or other similar tax in the contract for the purchase of Benchmark Obligations will bear the cost in the relevant Transaction. Section 5.3(e) includes a representation that the party making delivery of the Benchmark Obligations has good title to such Benchmark Obligations and that the Benchmark Obligations are free of liens and other encumbrances.

**THE PROVISIONS OF SECTION 5.3 SHOULD NOT BE VIEWED AS A COMPLETE LIST OF THE PROVISIONS ASSOCIATED WITH A TRANSACTION THAT SETTLES BY DELIVERY OF BENCHMARK OBLIGATIONS. THE FACTS OF A PARTICULAR TRANSACTION MAY DICTATE THAT ADDITIONAL PROVISIONS ARE NECESSARY OR THAT CERTAIN PROVISIONS OF SECTION 5.3 ARE UNNECESSARY. ACCORDINGLY, PARTIES SHOULD CAREFULLY CONSIDER THE DEFINITIONS AND ANY NECESSARY MODIFICATIONS AND CONSULT WITH THEIR LEGAL ADVISORS. PARTIES SHOULD ALSO CONSULT WITH THEIR LEGAL ADVISORS AS TO THE TREATMENT OF TRANSACTIONS THAT SETTLE BY PHYSICAL DELIVERY UNDER APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, SECURITIES LAWS AND INSOLVENCY LAWS) AND REGULATORY REQUIREMENTS.**

**g. *Local Currency Substitute.*** The Local Currency Substitute Disruption Fallback provides that (i) in the case of a Non-Deliverable Transaction, the party obligated to pay the Settlement Currency Amount or the In-the-Money Amount instead will pay the local currency equivalent of such amount and (ii) in the case of a Deliverable Transaction, the Transaction will be converted into a Non-Deliverable Transaction in accordance with the provisions of Section 5.2(c)(x) of the Definitions, and the party obligated to pay the Settlement Currency Amount or the In-the-Money Amount after giving effect to such conversion instead will pay the local currency equivalent of such amount. In the case of Non-Deliverable Transactions, this Disruption Fallback is the primary fallback for the General and Specific Inconvertibility, General and Specific Non-Transferability and Inconvertibility/Non-Transferability Disruption Events.



**h. No Fault Termination.** The No Fault Termination Disruption Fallback provides that the Transaction will terminate in accordance with the provisions of Section 6 of the ISDA Master Agreement as if such Transaction were an Affected Transaction, there were two Affected Parties and the parties had chosen “Loss” as the payment method. As more particularly explained in Section II.G of the User’s Guide to the 1992 ISDA Master Agreements (published by the International Swaps and Derivatives Association, Inc.), “Loss” is a general indemnification provision in which each Affected Party reasonably determines in good faith its total loss, including “breakage costs”, or its gain in connection with the terminated Transaction.

If none of the applicable Disruption Fallbacks provides the parties with a means of determining the Settlement Rate or settling the Transaction, the Transaction will terminate in accordance with the provisions in “No Fault Termination”. Parties, however, should be aware that in certain circumstances they may have difficulty determining the necessary valuations for this fallback.

**i. Non-Deliverable Substitute.** The Non-Deliverable Substitute Disruption Fallback provides that a Deliverable Transaction will settle in accordance with the provisions set forth in Section 2.2(b) or 3.7(b) of the Definitions, as appropriate (*see* Sections III.B.2 and III.C.6 above for a discussion of these provisions). In order for the provisions of these Sections to be operable, this fallback includes certain presumptions, including that the Valuation Date will be the original date that, but for the occurrence of a Disruption Event, would have been the Settlement Date and the Settlement Date will be a date determined in accordance with market practice for such a Non-Deliverable Transaction. The Working Group considered whether, instead of adjusting the Settlement Date, the Transaction should settle on the original date specified as the Settlement Date in the Confirmation and parties should either (i) re-create the rate for the prior date that would have been the Valuation Date as determined by market convention (*i.e.*, a date in most cases one or two Business Days prior to the Settlement Date) or (ii) use the Settlement Rate obtained on the Settlement Date and back out the appropriate amount of interest. The Working Group determined that it was unlikely that either (i) or (ii) would be commercially feasible options. Accordingly, the Definitions provide that the Settlement Rate will be determined on the original date that, but for the occurrence of a Disruption Event, would have been the Settlement Date and the Transaction actually will settle on the date that accords with market practice. The published bridges to the FEOMA, IFEMA and ICOM provide for this outcome, as opposed to the application of such agreement’s provisions on force majeure events.

In the case of Deliverable Transactions, this Disruption Fallback is the primary fallback for the General and Specific Inconvertibility, General and Specific Non-Transferability and Inconvertibility/Non-Transferability Disruption Events.

**j. Settlement Postponement.** If Settlement Postponement is the applicable Disruption Fallback, the Settlement Date of the Transaction will be postponed either (i) until the first Business Day after the applicable Disruption Event ceases to exist or (ii) for the “Maximum Days of Disruption”. The “Maximum Days of Disruption” must be specified in the Confirmation. If parties do not specify the “Maximum Days of Disruption”, settlement of the Transaction will be postponed until the Disruption Event ceases to exist.

This Disruption Fallback is a presumed fallback for the Nationalization, Benchmark Obligation Default, Governmental Authority Default, General and Specific Inconvertibility, General and Specific Non-Transferability and Inconvertibility/Non-Transferability Disruption Events. Therefore, if any of these events is specified as applicable to a Transaction and parties do not want such Transaction to be postponed indefinitely, they should specify the Maximum Days of Disruption in their Confirmation.

The Working Group considered whether to include a Disruption Fallback whereby both the Valuation Date and the Settlement Date would be postponed for the Maximum Days of Disruption or until the applicable Disruption Event ceases to exist. In such case, the amount payable by a particular party could be calculated only at the end of the postponement period and, therefore, the amount of interest due for the postponement period could only be calculated on such date. The Working Group ultimately decided not to include provisions for postponing the Valuation Date because allowing the Valuation Date to be postponed would, as a general matter, expose parties to an unknown level of market and credit risk.

**k. *Standardized Hierarchy of Disruption Fallbacks.*** Section 5.2(e) of the Definitions sets forth a standardized hierarchy of Disruption Fallbacks for each Disruption Event (which fallbacks will be automatically triggered in the order set forth in such Section if the Disruption Event occurs and is continuing on the Valuation Date or Settlement Date, as appropriate). Parties may choose other Disruption Fallbacks in lieu of, or in addition to, this standardized hierarchy. *Parties, however, should be aware that if any Disruption Fallbacks are specified in a Confirmation, the presumptions in Section 5.2(e) will not apply to the Transaction.*

**l. *Occurrence of More than One Disruption Event Applicable to a Transaction.*** Unless otherwise agreed, if more than one Disruption Event applicable to a Transaction occurs and is continuing on the relevant date as set forth in Section 5.1(f) of the Definitions, then Section 5.2(g) of the Definitions provides, with a few exceptions, that all the Disruption Events must be remedied in a specified order in accordance with the terms of the applicable Disruption Fallbacks.

The hierarchy set forth in Section 5.2(g) of the Definitions presumes that the parties rely on the Disruption Fallbacks for a Disruption Event contained in Section 5.2(e) of the Definitions. In particular, that Section assumes that the same Disruption Fallbacks (in the same order) will apply in respect of certain Disruption Events (e.g., that the same Disruption Fallbacks will apply for a General Inconvertibility Disruption Event and a Specific Inconvertibility Disruption Event). If parties specify Disruption Fallbacks in lieu of those set forth in Section 5.2(e), they should carefully consider the implications for purposes of Section 5.2(g).

#### **IV. HISTORICAL EXAMPLES**

This Section discusses events that occurred in recent years in Indonesia, New Zealand, Russia, South Africa, Thailand and Venezuela to demonstrate the application of particular provisions of the Definitions to such events. This discussion is intended to be a factual account of events and how the Definitions would address such events. However, this discussion may not be a complete account of such events, and is intended

for illustrative purposes only. The Sponsoring Organizations express no opinion on the official actions and events described below.

#### **A. Indonesia**

In May 1998, civil unrest in Indonesia led to the unscheduled closure of Indonesia's central bank, Bank Indonesia, for the afternoon on Thursday, May 14, and for the entire day on Wednesday, May 20 (each closure was announced on the day on which it occurred). Various commercial banks in Indonesia also closed on these dates, as well as on intermittent dates through Friday, May 22. As a result of these closures, many FX transactions involving the delivery of Indonesian rupiah could not settle on their scheduled settlement dates. Market participants, therefore, were faced with two issues: (i) whether a day on which Bank Indonesia and/or certain clearing banks were closed was a Business Day (*i.e.*, whether the scheduled settlement date should be adjusted in accordance with the applicable Business Day Convention) and (ii) the related issue of whether interest was due if a transaction settled after its scheduled settlement date.

The FX transactions at issue were governed by different master agreements, including the ISDA Master Agreement, FEOMA, IFEMA and ICOM. Certain of these transactions also were subject to the 1991 ISDA Definitions and/or the 1992 ISDA FX and Currency Option Definitions. Although the definition of "Business Day" is not uniform across these documents, market participants generally agreed, regardless of the documentation governing the relevant FX transaction, that (i) Thursday, May 14 was a Business Day because Bank Indonesia and most banks were open and settling rupiah transactions for a portion of the day and (ii) Wednesday, May 20 was not a Business Day because Bank Indonesia and clearing banks did not settle transactions on that day. Market participants, however, did not adopt a uniform approach to the other dates at issue, although most adopted one of two approaches. Certain market participants did not deliver the other currency involved in the FX transaction (usually U.S. dollars) until they received confirmation that the Indonesian rupiah owed to them had been credited to the appropriate account. Furthermore, these market participants decided that even if such confirmation was received on a date subsequent to the scheduled settlement date (and, accordingly, both currencies were not delivered until that date), neither party owed interest on the transaction. Other market participants did not require such confirmation if their counterparty was a creditworthy one and, instead, delivered the currency owed by them on the scheduled settlement date. If such counterparty did not deliver the Indonesian rupiah on the scheduled settlement date, then it was agreed that the counterparty would pay interest on the transaction.

Very few, if any, of the transactions affected by the events described above were subject to the Definitions. If such transactions had been subject to the Definitions, several different provisions of the Definitions may have been implicated, including the definition of Business Day and certain of the Disruption Events.

As discussed in Section III.A.1 above, a "Business Day" for purposes of the Settlement Date is defined as a day "on which commercial banks effect (*or, but for the occurrence of a Disruption Event applicable to a Transaction, would have effected*) delivery of the currency to be delivered" in the place(s) specified for such purposes or, if such a place is not specified, in the Principal Financial Center of such currency (emphasis added) (*see* Section 1.1(a) of the Definitions). Accordingly, unless otherwise specified by the parties, a Business Day for purposes of settling Transactions in Indonesian rupiah is a day on which commercial banks in Jakarta effect delivery of the rupiah (or would have effected such delivery but for the occurrence of an applicable

Disruption Event). Therefore, pursuant to these provisions and *assuming that no Disruption Events were applicable to a Transaction*, Thursday, May 14 would have been a Business Day (because commercial banks effected delivery of Indonesian rupiah for a portion of the day), while Wednesday, May 20 would not have been a Business Day (because commercial banks did not effect delivery of the Indonesian rupiah) for purposes of a Settlement Date.

As mentioned above, Bank Indonesia was opened on the other days in the relevant period (except for Thursday, May 21 which was an official holiday), however certain commercial banks were intermittently closed during this period. The definition of Business Day does not address sporadic closures of commercial banks.<sup>9</sup> Accordingly, for purposes of the Definitions, it is likely that such days would have been considered Business Days because on those days at least some commercial banks effected delivery of the rupiah.

If certain Disruption Events had been specified as applicable to the Transaction, then the parenthetical in the definition of Business Day regarding the occurrence of a Disruption Event may have altered the above-mentioned result with respect to the date of Wednesday, May 20. As previously discussed (*see* Section III.A.1 above), this parenthetical was included in the definition of Business Day for a very specific purpose—to remove any embedded postponement period for triggering the Disruption Fallbacks applicable to a Transaction. The parenthetical provides that, for purposes of the Settlement Date, a date will be considered to be a Business Day and will not be adjusted in accordance with the applicable Business Day Convention if commercial banks would have effected delivery of the relevant currency on such date but for the occurrence of a Disruption Event applicable to a Transaction. In addition, Section 5.1(f) of the Definitions provides that a Business Day for purposes of the Settlement Date includes any day on which commercial banks would have effected delivery of the relevant currency but for the occurrence in the relevant jurisdiction of a banking moratorium or other similar event related to an applicable Disruption Event. As a consequence, for purposes of the Settlement Date, a date will be considered a Business Day if commercial banks would have effected delivery of the relevant currency on such date but for (i) the occurrence of an applicable Disruption Event or (ii) the closure of banks caused by a banking moratorium or other similar event related to an applicable Disruption Event.

The events described above may have constituted several different Disruption Events for the purposes of the Definitions, including (i) a General or Specific Non-Transferability Disruption Event or (ii) a General or Specific Inconvertibility Disruption Event.<sup>10</sup> As discussed in Section III.F.1.c.v above, a General Non-Transferability Disruption Event occurs when, among other circumstances, an event makes it generally impossible to deliver the Event Currency between accounts in the Event Currency Jurisdiction. A Specific Non-Transferability Disruption Event occurs when, among other circumstances, it is impossible for a party to deliver the Event Currency between accounts in the Event Currency Jurisdiction (other than where such impossibility was due solely to that party's failure to comply with applicable law). The

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<sup>9</sup> If a party wanted to protect against the risk that it would not be able to deliver the currency owed by it due to events specific to it, such as the unexpected closure of its clearing bank, such party should specify that the Specific Non-Transferability Disruption Event applies to the Transaction.

<sup>10</sup> The majority of the transactions at issue were Deliverable and therefore involved delivery of the rupiah. Accordingly, for purposes of this discussion, a transaction will be presumed to have been Deliverable. If a transaction was Non-Deliverable, other Disruption Events may have been implicated.

effect of the closure of the Bank Indonesia and commercial banks on May 20 was that it was generally impossible and impossible for a party to deliver rupiah between accounts in Indonesia; therefore, both a General and Specific Non-Transferability Disruption Event would have occurred on that date. Accordingly, if May 20 was specified as the Settlement Date and either (or both) of those events was specified as applicable to a Transaction, the relevant Disruption Fallbacks would have been automatically triggered, *provided that* such date constituted a Business Day for purposes of the Definitions. Pursuant to Sections 1.1(a) and 5.1(f) of the Definitions, such date would be considered to be a Business Day for purposes of the Settlement Date despite the fact that commercial banks did not effect delivery of the rupiah if the unscheduled closure of the central bank and all commercial banks on that date constituted an event “similar to a banking moratorium”. In such a situation, May 20 would have been considered to be a Business Day for purposes of the Settlement Date and, therefore, the applicable Disruption Fallbacks would have been automatically triggered.

A General Inconvertibility Event occurs when it is generally impossible to convert the Event Currency into the Non-Event Currency in the relevant jurisdiction (through customary legal means); a Specific Inconvertibility Event occurs when it is impossible for a party to convert the Minimum Amount of the Event Currency into the Non-Event Currency in such jurisdiction (other than where such impossibility is due solely to that party’s failure to comply with applicable law). The effect of the closure of the Bank Indonesia and commercial banks on May 20 was that it was generally impossible for a party to convert rupiah into U.S. dollars (or other currencies) in Indonesia; therefore, both a General and Specific Inconvertibility Disruption Event would have occurred. Accordingly, if May 20 was specified as the Settlement Date and either (or both) of those events was specified as applicable to a Transaction, the relevant Disruption Fallbacks would have been automatically triggered *provided that*, as discussed above, such date constituted a Business Day for purposes of the Definitions.<sup>11</sup>

Pursuant to Section 5.2(e)(i)(A)(1) of the Definitions, the primary Disruption Fallback for each of the foregoing events is Non-Deliverable Substitute. As discussed in Section III.F.2.i above, this fallback provides that a Deliverable Transaction will settle as a Non-Deliverable Transaction in accordance with the provisions set forth in Section 2.2(b) or 3.7(b) of the Definitions, as appropriate.

It should be noted that a Material Change in Circumstance Disruption Event would not apply to the events in Indonesia because it is defined as any event that makes it impossible to fulfill a party’s obligations under the Transaction (and generally to fulfill similar obligations) *other than events specified as Disruption Events in Section 5.1(d)* (see Part III.F.1.c.ix above). If a party could not fulfill its obligations under a Transaction because it was impossible to deliver or convert rupiah in Indonesia, then a General or Specific Inconvertibility or a General or Specific Non-Transferability Disruption Event would have occurred and therefore a Material Change in Circumstance Disruption Event would not have occurred.

## **B. New Zealand**

In early 1984, a market perception developed that the New Zealand dollar, which was fixed against a basket of currencies, was overvalued. This perception stemmed from

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<sup>11</sup> Because a General and Specific Inconvertibility Disruption Event and a General and Specific Non-Transferability Disruption Event would have occurred on May 20, an Inconvertibility/Non-Transferability Event also would have occurred.

the fact that the economies of the countries whose currencies were basketed had been performing relatively better than the New Zealand economy. Despite this performance, the National Party Government did not devalue the New Zealand dollar. In July 1984, there was a surprise announcement of an early election in which the National Party was expected to be defeated. Anticipation of a victory for the Labour Party, who favored devaluation of the New Zealand dollar, triggered large foreign exchange market outflows. The Labour Party won the election and, upon taking power, closed the foreign exchange market to stem the developing currency crisis. The foreign exchange market was closed for four days preceding the government's announcement of a 20% devaluation of the New Zealand dollar against the basket of currencies.

There are several different Disruption Events that may have been implicated by the above-mentioned events. For Non-Deliverable Transactions, such events may have affected the parties' ability to obtain a Settlement Rate. In particular, during the four day period, the official fixing rate was not quoted by the government. If parties had specified such rate as the Settlement Rate for their Non-Deliverable Transactions, a Price Source Disruption Event (which is presumed to apply to all Non-Deliverable Transactions) or an Illiquidity Disruption Event (which must be specified in the Confirmation) would have occurred. Consequently, if the Valuation Date (or in the case of an Illiquidity Disruption Event, the Illiquidity Valuation Date (if specified)) fell on any of those four dates, the applicable Disruption Fallbacks would have been automatically triggered. The Definitions provide that the primary fallback for either event (absent specification to the contrary in the Confirmation) is that the Calculation Agent will determine the Settlement Rate using the Settlement Rate Option, Currency-Reference Dealers (*see* Section 5.2(e)(i)(E)(1) of the Definitions). *See* Section III.E.2.b.iii above for a complete discussion of the Currency-Reference Dealers Settlement Rate Option. In the event that the rate could not be determined pursuant to this option, the Calculation Agent would determine the Settlement Rate in accordance with the Disruption Fallback, Calculation Agent Determination of Settlement Rate.

The events in New Zealand also may have constituted either a General or Specific Inconvertibility Disruption Event or a General or Specific Non-Transferability Disruption Event. A General Inconvertibility Event would have occurred if the government's actions made it generally impossible to convert New Zealand dollars into the Non-Event Currency in New Zealand; a Specific Inconvertibility Event would have occurred if the government's actions made it impossible for a party to make such a conversion (other than where such impossibility was due solely to that party's failure to comply with applicable law). A General Non-Transferability Disruption Event would have occurred if, among other circumstances, it was generally impossible to deliver New Zealand dollars between accounts in New Zealand during the four days at issue. A Specific Non-Transferability Disruption Event would have occurred if it was impossible for a party to delivery New Zealand dollars between accounts in New Zealand (other than where such impossibility was due solely to that party's failure to comply with applicable law). If the Settlement Date for a Transaction fell on any of the four days, then the applicable Disruption Fallbacks would have been automatically triggered.

The primary Disruption Fallback is the same for each of the above-mentioned events. Pursuant to such fallback, (i) if the Transaction was Deliverable, it would be converted to a Non-Deliverable Transaction in accordance with the Non-Deliverable Substitute Disruption Fallback (as further explained in Section III.F.2.i above) and (ii) if the Transaction was Non-Deliverable, the applicable payment would be made in New Zealand dollars in accordance with the Local Currency Substitute Disruption Fallback (as further explained in Section III.F.2.g above).

### C. Russia

On August 17, 1998, the Russian government announced a plan to convert the government debt obligations known as the GKO and the OFZs into new governmental securities and a 90-day moratorium on payments by Russian residents under forward currency contracts entered into with non-Russian counterparties. The moratorium was generally interpreted by market participants to include any payments by Russian residents (in foreign currency or rubles, by delivery of securities or otherwise) pursuant to deliverable and non-deliverable foreign exchange forwards, futures and options contracts. As a consequence of the Russian government's announcement, trading on the Moscow Interbank Currency Exchange ("MICEX") and the fixing of a RUB/USD exchange rate by MICEX were severely disrupted. Historically, MICEX had determined a rate each morning through a process of narrowing the bid-ask spread until a final fixing rate was reached through submission of orders prior to the opening of SELT, MICEX's electronic trading system. The fixing rate was then published as the "Final Settlement Price" on Reuters page MICEXFRX. International foreign exchange dealers widely accepted the rate published on MICEXFRX as the standard of the RUB/USD spot rate for purposes of settling non-deliverable transactions. As of August 26, Reuters page MICEXFRX was no longer updated although the date, August 26, and the August 26 rate of 7.86 continued to appear on the page. On September 3 and 4, MICEX published a fixing rate on Reuters page MMVB based on trading on SELT. However, the attempt to publish this rate was abandoned after September 4. On September 15 the central bank of Russia stated that it believed that a rate based on trading on SELT could be taken as an indicative rate for settlement of foreign exchange transactions.

In response to MICEX's failure to update the rate on Reuters page MICEXFRX, the market devised an alternative settlement rate source. On August 31, the Chicago Mercantile Exchange and the Emerging Market Traders Association began publishing the CME/EMTA Reference Rate on Reuters page EMTA. The CME/EMTA Reference Rate was calculated through a daily random polling of eight market participants (foreign subsidiaries of international banks with banking licenses in Moscow and larger Russian banks based in Moscow) from a list of twelve. Many non-deliverable contracts stipulated a polling of reference banks as the price source fallback in the absence of the MICEXFRX rate. In place of such polls, many international foreign exchange dealers agreed to rely on the CME/EMTA Reference Rate as the primary fallback price source in place of private bank polling. Market participants began to express concern over the methodology for calculating the CME/EMTA Reference Rate following an uncharacteristic increase in the demand for rubles on September 15 immediately prior to the 11:00 a.m. polling. As a result, the RUB/USD exchange rate moved almost 40% (from approximately 12 rubles to the dollar to just over 7 rubles). In response to the distorted September 15 CME/EMTA Reference Rate, the methodology for calculation was revised to be the average rate derived from two separate pollings of market participants taken at randomly selected times during the afternoon of each trading day.

The events described above may have constituted several different Disruption Events for purposes of the Definitions including (i) a Price Source Disruption Event, (ii) an Illiquidity Disruption Event, (iii) a Price Materiality Disruption Event, (iv) a Specific Non-Transferability Disruption Event, (v) a Benchmark Obligation Default Disruption Event, (vi) a Government Authority Default Disruption Event and (vii) a Material Change in Circumstance Disruption Event.

As discussed in Sections III.F.1.c.i and ii above, a Price Source Disruption Event occurs when it becomes impossible to obtain the Settlement Rate on the Valuation Date

and an Illiquidity Disruption Event occurs when it becomes impossible to obtain the Settlement Rate in the Minimum Amount (as specified in the Confirmation). For Non-Deliverable FX Transactions, the events described above affected the parties' ability to obtain a Settlement Rate. Because the date, August 26, and the August 26 rate continued to appear on Reuters page MICEXFRX after August 26, it was arguably impossible for parties to obtain the MICEXFRX rate for a Valuation Date after August 26. If it was impossible for the parties to obtain the MICEXFRX rate after August 26 and the parties had specified such rate as the Settlement Rate for their Non-Deliverable FX Transactions, a Price Source Disruption Event (which is presumed to apply to all Non-Deliverable FX Transactions) or an Illiquidity Disruption Event (which must be specified in the Confirmation) would have occurred. Consequently, if the Valuation Date (or in the case of an Illiquidity Disruption Event, the Illiquidity Valuation Date (if specified)) fell within the period in which it was impossible for the parties to obtain the MICEXFRX rate, the applicable Disruption Fallbacks would have been automatically triggered. The Definitions provide that the presumed fallbacks for either event (absent specification to the contrary in the Confirmation) are that the Calculation Agent will determine the Settlement Rate using (i) the Settlement Rate Option Currency-Reference Dealers (see Section 5.2(e)(i)(E)(1) of the Definitions) or (ii) in the event that the rate could not be determined pursuant to Currency-Reference Dealers, the Disruption Fallback, Calculation Agent Determination of Settlement Rate.

As discussed in Section III.F.1.c.iv above, a Price Materiality Disruption Event occurs when, due to political or market events, the Settlement Rate (calculated in accordance with the applicable Settlement Rate Option) is not reflective of the "market" rate. The parties must specify in their Confirmation (a) whether the market rate is to be obtained from dealer quotations or from another source or calculated by the Calculation Agent and (b) by what percentage such market rate must differ from the Settlement Rate in order for the event to be triggered. If the parties had specified the MICEXFRX rate as the Settlement Rate and on the Valuation Date such rate differed from the specified market rate by the Price Materiality Percentage, a Price Materiality Disruption Event would have occurred. Similarly, if on September 15, 1998 the parties had specified the CME/EMTA Reference Rate as the Primary Rate and such rate differed from the Secondary Rate by the Price Materiality Percentage, a Price Materiality Disruption Event would have occurred. Accordingly, the applicable Disruption Fallbacks would have been automatically triggered. The Definitions provide that the presumed fallbacks for a Price Materiality Disruption Event (absent specification to the contrary in the Confirmation) is that the Calculation Agent will determine the Settlement Rate using (i) the Settlement Rate Option, Currency-Reference Dealers (see Section 5.2(e)(i)(E)(1) of the Definitions) or (ii) in the event that the rate could not be determined pursuant to Currency-Reference Dealers, the Disruption Fallback, Calculation Agent Determination of Settlement Rate.

It is worth noting that under the Definitions the change from the MICEXFRX rate to the CME/EMTA Reference Rate would not have resulted in a Dual Exchange Rate Disruption Event since a Dual Exchange Rate Disruption Event occurs when an existing rate source splits to display two separate rates.

As discussed in Section III.F.1.c.v above, a Specific Non-Transferability Disruption Event occurs when, among other circumstances, it is impossible for a party to deliver the Event Currency between accounts in the Event Currency Jurisdiction (other than where such impossibility was due solely to the party's failure to comply with applicable law). The effect of the 90-day moratorium on payments by Russian residents to non-Russian counterparties under forward currency contracts was to make it impossible for a party to deliver rubles intended to pay any obligations subject to the



moratorium. Therefore, during such 90-day moratorium period a Specific Non-Transferability Disruption Event would have occurred. Accordingly, if a Settlement Date fell within such period, the applicable Disruption Fallbacks would have been automatically triggered on such date. The Definitions provide that the presumed fallback for each event is Settlement Postponement up to the specified Maximum Days of Disruption, followed by No Fault Termination. A General Non-Transferability Disruption Event would not have occurred because while the moratorium was declared in respect of payments by residents to non-residents under certain capital currency operations, no general restrictions were imposed over the transfer of rubles between accounts within Russia.

As discussed in Section III.F.1.c.vi above, a Benchmark Obligation Default Disruption Event occurs when a default with respect to a Benchmark Obligation has occurred. In order for this Disruption Event to be operative, the parties must specify in their Confirmation the Benchmark Obligation(s) applicable to their Transaction. If the parties had specified either or both of the GKO(s) and the OFZ(s) as their Benchmark Obligation(s), the modifications to the terms and conditions of payment on such government debt obligations pursuant to the conversion plan without the consent of the holders may have constituted a Benchmark Obligation Default. Accordingly, the applicable Disruption Fallbacks would have been automatically triggered on the Settlement Date. The Definitions provide that the first presumed fallback for a Benchmark Obligation Default Disruption Event is the delivery of the specified quantity of the Benchmark Obligation, the value of which is either face value or market value as specified in the Confirmation. The second presumed fallback is Settlement Postponement up to the specified Maximum Days of Disruption, followed by No Fault Termination.

As discussed in Section III.F.1.c.vii above, a Governmental Authority Default Disruption Event occurs when a Governmental Authority defaults with respect to any security it issues or guarantees or any indebtedness for borrowed money it incurs or guarantees. The modifications to the terms and conditions of payment on the GKO(s) and the OFZ(s) pursuant to the conversion plan without the consent of the holders may have constituted a Governmental Authority Default. A Governmental Authority Default Disruption Event would have been triggered on the Settlement Date (as opposed to upon the announcement of the conversion plan or the date of such modifications). Accordingly, the applicable Disruption Fallbacks would have been automatically triggered. As in a Benchmark Obligation Default Disruption Event, the Definitions provide that the first presumed fallback for a Governmental Authority Default Disruption Event is the delivery of the specified quantity of the defaulted government obligation, the value of which is either face value or market value as specified in the Confirmation. The second presumed fallback is Settlement Postponement up to the specified Maximum Days of Disruption, followed by No Fault Termination.

As discussed in Section III.F.1.c.ix above, a Material Change in Circumstance Disruption Event is an event, other than any events specified as Disruption Events in Section 5.1(d), that makes it impossible to fulfill a party's obligations under the Transaction and generally to fulfill similar obligations. The events in Russia did not constitute a Material Change in Circumstance if the events were covered by the other Disruption Events as described above.

#### **D. South Africa**

South Africa unified its two-tier currency system comprising the commercial rand and the financial rand in March 1995, when the government abolished the financial rand. If a similar situation were to occur today, the abolishment of the financial rand would not

be a Disruption Event under the Definitions. Both the commercial rand and the financial rand rates were quoted by the South African Reserve Bank. Section 4.1(b) of the Definitions provides that if a currency exchange rate quoted by a governmental authority ceases to exist and is replaced by another rate quoted by a governmental authority, Non-Deliverable Transactions will settle at that new rate. Accordingly, pursuant to this provision, if the Settlement Rate for a Non-Deliverable Transaction was to have been the financial rand rate, that Transaction would settle at the commercial rand rate.

## **E. Thailand**

In May 1997, the Bank of Thailand directed Thai banks to stop supplying baht to non-Thai investors who could not demonstrate a legitimate commercial purpose for the baht. This resulted in a two-tier currency market where foreign investors who could not demonstrate a “legitimate commercial purpose” for buying baht paid one rate off-shore for baht while the remaining investors paid another rate on-shore. After the occurrence of these events, the rate quoted on Reuters Screen “THB=” split into two rates—an on-shore rate and an off-shore rate.

The primary effect of the events described above was on parties’ ability to obtain a rate (which, for purposes of the Definitions, would be the Settlement Rate) to settle Non-Deliverable Transactions. The Definitions contain the following Disruption Events that address a party’s ability to obtain the Settlement Rate for a Transaction: Illiquidity, Price Source Disruption, Dual Exchange Rate and Price Materiality. Both Illiquidity and Price Source Disruption require that obtaining the Settlement Rate be impossible. During the events in Thailand, it was never impossible for parties to obtain a rate, even if the parties had specified “Currency-Reference Dealers” as the applicable Settlement Rate Option with the on-shore offices of such dealers providing the quotations. Although it may have been “impossible” for such on-shore offices to provide firm quotations to parties who could not demonstrate a “legitimate commercial purpose” for baht, Section 4.6(g) of the Definitions provides that in such a situation quotations should be obtained from off-shore offices. Therefore, an Illiquidity or Price Source Disruption Event would not have been triggered by the events outlined above.

The applicability of the Dual Exchange Rate Disruption Event to the situation in Thailand would depend on the particular Settlement Rate Option chosen in the Confirmation. As discussed in Section III.F.1.c.iii above, the Dual Exchange Rate Disruption Event addresses the situation where the currency exchange rate referenced in a Settlement Rate Option splits into two or more rates. If parties had specified the Reuters Screen “THB=” as the applicable Settlement Rate Option, then a Dual Exchange Rate Disruption Event would have occurred and been continuing if the two-tiered system was in place on the relevant Valuation Date. If, however, parties had specified “Currency-Reference Dealers” as the applicable Settlement Rate Option, then a Dual Exchange Rate Disruption Event would not have been triggered in all cases. Unless otherwise specified in a Confirmation, the exchange rate referenced in the “Currency-Reference Dealers” Settlement Rate Option is the average of the Reference Currency bid and offer rates. If parties had specified that non-Thai offices of the Reference Dealers would provide quotations of the Thai baht exchange rate, then a Dual Exchange Rate Disruption Event would not be triggered because only one rate is relevant—the average of the off-shore Reference Currency bid and offer rates. If, however, parties had specified a combination of on-shore and off-shore offices, then a Dual Exchange Rate would have occurred because there would be two such averages—the on-shore average and the off-shore average. If the parties have not specified a Disruption Fallback for the Dual Exchange Rate Disruption Event, the

Definitions provide that the Settlement Rate for the Transaction will be determined by the Calculation Agent.

## **F. Venezuela**

Pursuant to reforms in 1989, the Venezuelan government introduced a single free-floating Venezuelan bolivar/U.S. dollar exchange rate, and largely removed foreign exchange restrictions. In early 1994, large capital outflows produced a sharp depreciation of the bolivar and a steep reduction in Venezuela's foreign exchange reserves. As a result, the exchange rate fell from 106 VEB/US \$1 at the end of 1993 to 203 VEB/US \$1 in June 1994. In response, in late June 1994, the Central Bank of Venezuela ordered commercial banks in Venezuela not to engage in foreign exchange transactions. When the foreign exchange market reopened in early July (approximately two weeks later), the government fixed the exchange rate at a single controlled rate of 170 VEB/US \$1 and instituted various other exchange controls, including controls on external debt payments and the repatriation of U.S. dollars. This official exchange rate was devalued to 290 VEB/US \$1 in December 1995 (the exchange controls were not lifted).

As a result of the government's approval of the trading of U.S. dollar denominated Brady bonds on the Caracas stock exchange in June 1995, an alternative to this official exchange rate developed at a rate implied from the value of the Brady bonds. This implied rate stood at 336 VEB/US \$1 on December 13, 1995.

There are several different Disruption Events that may have been implicated by the above-mentioned events. For Non-Deliverable Transactions, such events may have affected the parties' ability to obtain a Settlement Rate. In particular, during the two week period between the government's imposition of exchange controls and the first publication of the new offered rate, no exchange rate was quoted by the government. If parties had specified such rate as the Settlement Rate for their Non-Deliverable Transactions, a Price Source Disruption Event (which is presumed to apply to all Non-Deliverable Transactions) or an Illiquidity Disruption Event (which must be specified in the Confirmation) would have occurred. Consequently, if the Valuation Date (or in the case of an Illiquidity Disruption Event, the Illiquidity Valuation Date (if specified)), fell on any of those dates, the applicable Disruption Fallbacks would have been automatically triggered. If the parties have not specified any Disruption Fallbacks for a Price Source Disruption or Illiquidity Disruption Event, the Fallback Reference Price would be Currency-Reference Dealers as the alternate Settlement Rate Option and the Calculation Agent would determine the Settlement Rate.

However, the government's actions with respect to the exchange rate after the foreign exchange market reopened would not have implicated any of the Disruption Events. Section 4.1(b) of the Definitions provides that if a currency exchange rate sanctioned by a governmental authority ceases to exist and is replaced by another rate sanctioned by a governmental authority, Non-Deliverable Transactions will settle at that new rate. Accordingly, pursuant to this provision, if the Settlement Rate for a Non-Deliverable Transaction was to have been the free floating rate, that Transaction would settle at the official rate quoted by the government.

At some point in 1995, however, the market moved away from settling transactions at this official rate and instead relied on the implied Brady rate. Under the Definitions, this change would not have resulted in a Dual Exchange Rate Disruption Event. As discussed in Section III.F.1.c.iii above, a Dual Exchange Rate Disruption Event does not occur in a situation where a new currency exchange rate is introduced that

becomes the commercially viable rate (but does not replace the original rate). In order to protect against the risk that the rate referenced in the applicable Settlement Rate Option will be significantly different from such new rate (as was the case in Venezuela), parties must specify that (i) Price Materiality is applicable to the Transaction and (ii) the Secondary Rate should be determined using the Settlement Rate Option, “Currency-Wholesale Market”. If parties did so specify, they should also carefully consider whether the Fallback Reference Price should be determined in accordance with such Settlement Rate Option, rather than the presumed Settlement Rate Option of Currency-Reference Dealers.

The events in Venezuela also may have constituted either a General or Specific Inconvertibility Disruption Event or a General or Specific Non-Transferability Disruption Event. A General Inconvertibility Event would have occurred if the government’s actions made it generally impossible to convert Venezuelan bolivar into the Non-Event Currency in Venezuela; a Specific Inconvertibility Event would have occurred if the government’s actions made it impossible for a party to make such a conversion (other than where such impossibility was due solely to that party’s failure to comply with applicable law). A General Non-Transferability Disruption Event would have occurred if it was generally impossible to deliver Venezuelan bolivar between accounts in Venezuela or if it was impossible to repatriate the Non-Event Currency. A Specific Non-Transferability Disruption Event would have occurred if it was impossible for a party to deliver Venezuelan bolivar between accounts in Venezuela (other than where such impossibility was due solely to that party’s failure to comply with applicable law) or to repatriate the Non-Event Currency. If the Settlement Date for a Transaction fell during the period when these exchange controls were in place, then the applicable Disruption Fallbacks would have been automatically triggered. If the parties have not specified any Disruption Fallbacks, in the case of a Deliverable Transaction, Non-Deliverable Substitute will apply, or, in the case of a Non-Deliverable Transaction, Local Currency Substitute will apply. If Non-Deliverable Substitute and Local Currency Substitute fail to provide a means by which to settle the Transaction, the Definitions provide Settlement Postponement as the next available Disruption Fallback.

## V. TABLE OF PRESUMPTIONS

The following table sets forth presumptions built into certain sections of the Definitions that will apply to a Transaction if the parties do not specify certain information in the Confirmation.

SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
ARTICLE 1 CERTAIN GENERAL DEFINITIONS		
Section 1.1 Business Day (as applied to Settlement Date and Premium Date)	<i>The place where commercial banks effect delivery of the currency to be delivered.</i>	(A) A day on which commercial banks effect delivery of the currency to be delivered in the Principal Financial Center of the currency to be delivered; (B) where the currency to be delivered is the European Currency Unit, a day that is an ECU Settlement Day; or (C) where the currency to be delivered is euro, a day that is a Euro Settlement Date.
Section 1.1 Business Day (as applied to Valuation Date or Averaging Date)	<i>The place where commercial banks are open for business.</i>	(A) A day on which commercial banks are open (i) in the Principal Financial Center of the Reference Currency, or in the case of a Currency Option Transaction where such currency is not specified, the Call Currency and the Put Currency and (ii) the places where the offices through which each party is transacting are located; (B) where the currency to be delivered is the European Currency Unit, a day that is an ECU Settlement Day and a Business Day in the places where the offices through which each party is transacting are located; or (C) where the currency to be delivered is euro, a day that is a Euro Settlement Date and a Business Day in the places where the offices through which each party is transacting are located.

SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
Section 1.1 Business Day (as applied to Exercise Date, Specified Exercise Date, Exercise Period and Expiration Date, in the case of a Currency Option Transaction)	<i>The place where commercial banks are open for business.</i>	A day on which commercial banks are open in the place where the office through which the Seller is transacting is located, as specified in a Confirmation.
Section 1.1 Business Day (as applied to Settlement Rate Option)	<i>The place where commercial banks are open for business.</i>	(A) A day on which commercial banks are open in the Principal Financial Center of the Reference Currency; (B) where the Reference Currency is the European Currency Unit, an ECU Settlement Day; or (C) where the Reference Currency is euro, a Euro Settlement Date.
Section 1.1 Business Day (as applied to any other provisions of the Definitions or a Confirmation)	<i>The place where commercial banks are open for business.</i>	A day on which commercial banks are open for business in the places where the offices through which each party is transacting are located, as specified in a Confirmation.
Section 1.2 Business Day Convention	<i>The convention is not specified for a date.</i>	The applicable Business Day convention will be: Preceding for Valuation Date Following for Settlement Date Preceding for Averaging Date Following for Premium Payment Date Following for Expiration Date Following for Specified Exercise Date
Section 1.7 Deliverable	<i>Whether the Transaction is Deliverable or Non-Deliverable.</i>	Deliverable will be deemed to apply to the Transaction.
Section 1.16(c) Settlement Rate	<i>The Settlement Rate or a means of determining the Settlement Rate.</i>	The Spot Rate for that Valuation Date.

SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
Section 1.16(e) Spot Rate	<i>A Settlement Rate Option.</i>	The currency exchange rate determined in good faith and in a commercially reasonable manner by the Calculation Agent.
Section 1.16(f) Valuation Date (as applied to an FX Transaction)	<i>The Valuation Date.</i>	Two Business Days prior to the Settlement Date.
Section 1.16(f) Valuation Date (as applied to a Currency Option Transaction)	<i>The Valuation Date.</i>	The Exercise Date.
Section 1.17(b) Notional Amount (as applied to a Non-Deliverable FX Transaction)	<i>The Notional Amount.</i>	The quantity of settlement currency equal to the Reference Currency Notional Amount divided by the Forward Rate.
Section 1.17(b) Notional Amount (as applied to a Non-Deliverable Currency Option Transaction)	<i>The Notional Amount.</i>	Whichever of the Call Currency Amount or the Put Currency Amount that is denominated in the Settlement Currency.
Section 1.18 Principal Financial Center	<i>The Principal Financial Center.</i>	The financial center or centers indicated for a Transaction and a currency in Annex A of the Definitions.
Section 1.20 Reference Currency Buyer	<i>The Reference Currency Buyer.</i>	The party to which the Reference Currency is owed (or would have been owed if the Transaction were a Deliverable Transaction) on the Settlement Date.
Section 1.21(b) Reference Currency Notional Amount (as applied to a Non-Deliverable FX Transaction)	<i>The Reference Currency Notional Amount.</i>	The quantity of Reference Currency equal to the Notional Amount multiplied by the Forward Rate.

SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
Section 1.21(b) Reference Currency Notional Amount (as applied to a Non-Deliverable Currency Option Transaction)	<i>The Reference Currency Notional Amount.</i>	Whichever of the Call Currency Amount or Put Currency Amount that is denominated in the Reference Currency.
Section 1.22 Reference Currency Seller	<i>The Reference Currency Seller.</i>	The party which owes (or would have owed if the Transaction were a Deliverable Transaction) the Reference Currency on the Settlement Date.
Section 1.23 Rounding	<i>The Rounding Convention.</i>	All percentages resulting from calculations referred to in the Definitions will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point and any currency amounts used in or resulting from such calculations will be rounded in accordance with the relevant market practice.
Section 1.24 Settlement Date	<i>The applicable Business Day Convention.</i>	The Settlement Date is subject to adjustment in accordance with the Following Business Day Convention.
ARTICLE 2 GENERAL TERMS RELATING TO FX TRANSACTIONS		
Section 2.1(a) Forward Rate	<i>The Forward Rate.</i>	The currency exchange rate obtained by dividing the Reference Currency Notional Amount by the Notional Amount.



SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
ARTICLE 3 GENERAL TERMS RELATING TO CURRENCY OPTION TRANSACTIONS		
Section 3.1(b) Call Currency	<i>The Call Currency.</i>	The currency that is to be purchased by the Buyer.
Section 3.1(c) Call Currency Amount	<i>The Call Currency Amount.</i>	The Put Currency Amount multiplied by the Strike Price (where the Strike Price is expressed as the amount of Call Currency to be paid per one unit of Put Currency).
Section 3.1(d) Put Currency	<i>The Put Currency.</i>	The currency that is to be sold by the Buyer.
Section 3.1(e) Put Currency Amount	<i>The Put Currency Amount.</i>	The Call Currency Amount divided by the Strike Price (where the Strike Price is expressed as the amount of Call Currency to be paid per one unit of Put Currency).
Section 3.4(b) Premium Payment Date	<i>The applicable Business Day Convention.</i>	The Premium Payment Date is subject to adjustment in accordance with the Following Business Day Convention.
Section 3.5(a) Commencement Date	<i>The Commencement Date.</i>	The Trade Date.
Section 3.5(d) Expiration Date	<i>The applicable Business Day Convention.</i>	The Expiration Date is subject to adjustment in accordance with the Following Business Day Convention.
Section 3.5(f) Latest Exercise Time (as applied to a Currency Option Transaction)	<i>The Latest Exercise Time for any date other than the Expiration Date.</i>	The Expiration Time.
Section 3.5(h) Specified Exercise Date (as applied to a Bermuda style Currency Option Transaction)	<i>The applicable Business Day Convention.</i>	The Specified Exercise Date is subject to adjustment in accordance with the Following Business Day Convention.
Section 3.6(a) Exercise (as applied to a Currency Option Transaction)	<i>The method of Exercise.</i>	A Currency Option Transaction may be exercised only in whole.

SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
Section 3.6(c) Automatic Exercise (as applied to a Currency Option Transaction)	<i>Whether Automatic Exercise will apply.</i>	Automatic Exercise will be deemed to apply to a Currency Option Transaction.
Section 3.8(a) Averaging Date	<i>The applicable Business Day Convention.</i>	The Averaging Date is subject to adjustment in accordance with the Preceding Business Day Convention.
Section 3.8(c) Market Disruption	<i>N/A</i>	Where it becomes impossible to obtain the Spot Rate on an Averaging Date, such Averaging Date will be deemed not to be a relevant Averaging Date for purposes of determining the relevant Settlement Rate.
ARTICLE 4 CALCULATION OF RATES FOR CERTAIN SETTLEMENT RATE OPTIONS		
Section 4.2 Annex A	<i>Date of Annex A incorporated in a Transaction.</i>	Parties will be deemed to have incorporated Annex A as amended through the Trade Date of a Transaction.
Section 4.3 Currencies	<i>N/A</i>	Each currency with respect to a particular country defined in Annex A will be deemed to include any lawful successor currency of that country.
Section 4.6(b) Local Asset (as applied to Settlement Rate Option: Currency- Implied Rate (Local Asset))	<i>The Debt Security.</i>	The debt security selected by the Calculation Agent, for which quotations are available in the Reference Currency in the country where the Reference Currency is the lawful currency and in the Settlement Currency in international markets outside such country.
Section 4.6(c) Reference Dealers (as applied to Settlement Rate Option: Currency- Implied Rate (ADR), Currency- Implied Rate (Local Asset) or Currency- Reference Dealers)	<i>The Reference Dealers.</i>	Four leading dealers in the relevant market selected by the Calculation Agent.

SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
Section 4.6(e) Specified Amount (as applied to a Settlement Rate Option)	<i>The Specified Amount.</i>	An amount of Reference Currency equal to the Reference Currency Notional Amount.
Section 4.6(f) Specified Company (as applied to a Settlement Rate Option: Currency- Implied Rate (ADR))	<i>The Specified Company.</i>	A company selected by the Calculation Agent, which company's shares trade (i) on an exchange located in the country for which the Reference Currency is the lawful currency and (ii) in the United States in the form of an American Depositary Receipt.
Section 4.6(g) Specified Office (as applied to Settlement Rate Option: Currency- Reference Dealers)	<i>The city.</i>	The Specified Office will be deemed to be an office or branch of the Reference Dealer located in the Principal Financial Center of the Reference Currency (See Section 4.6(g)(i)-(ii) for exceptions).
Section 4.6(h) Specified Rate	<i>The rate.</i>	The Specified Rate will be deemed to be the average of the Reference Currency bid and offer rate.
ARTICLE 5 DISRUPTION EVENTS		
Section 5.1(e)(i)(A) Applicable Disruption Events (as applied to a Deliverable Transaction)	<i>Any Disruption Event.</i>	No Disruption Events will be deemed to have been specified.
Section 5.1(e)(i)(B) Applicable Disruption Events (as applied to a Non-Deliverable Transaction)	<i>Any Disruption Event.</i>	Price Source Disruption will be deemed to have been specified. Price Source Disruption will apply even if other Disruption Events are specified unless the parties state in the Confirmation that Price Source Disruption does not apply to the Transaction.
Section 5.2(c)(ix) No Fault Termination	N/A	"Loss" applies to the Transaction and the Termination Currency is the Non-Event Currency.

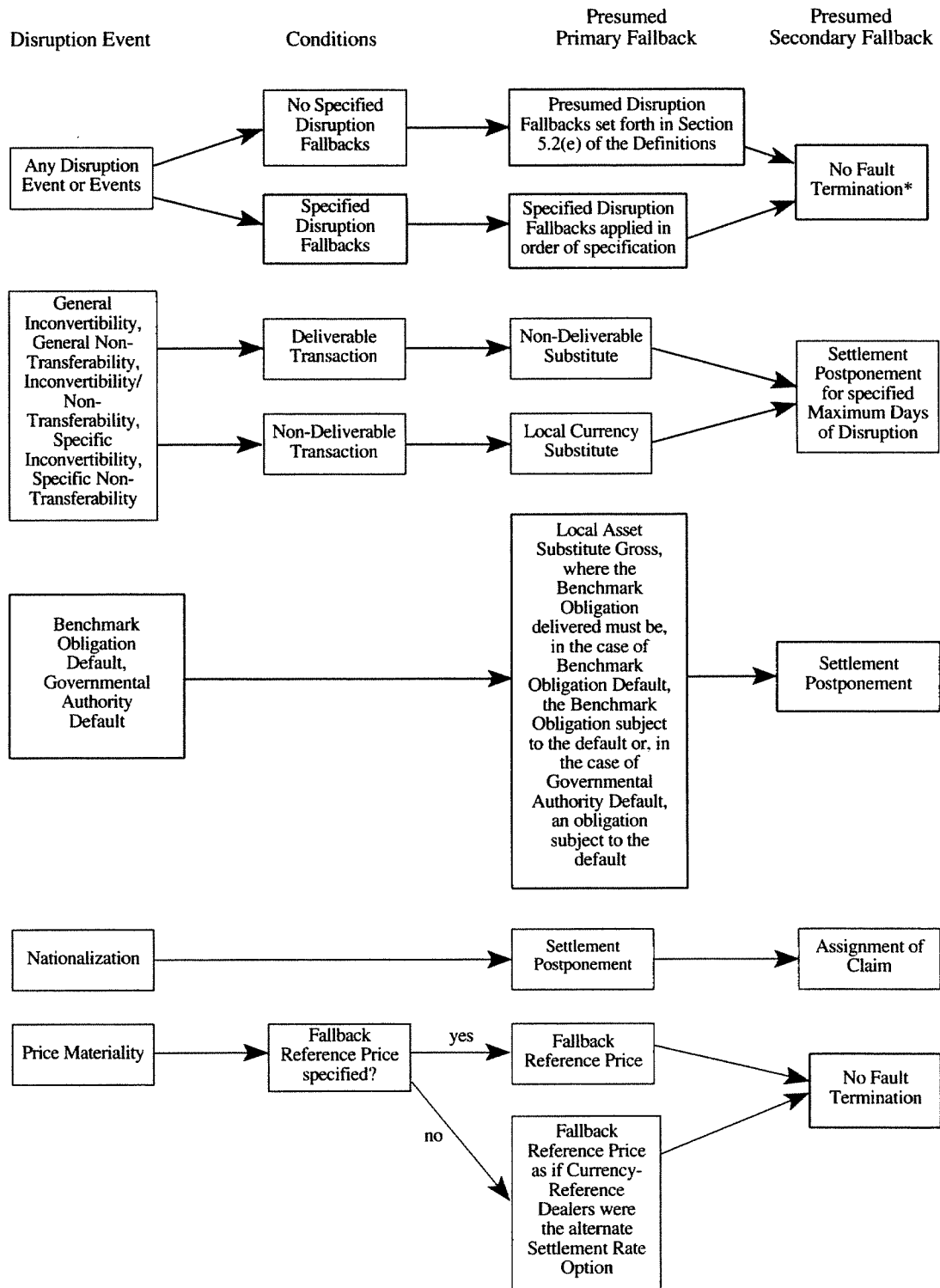
SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
Section 5.2(c)(x)(A) Non-Deliverable Substitute <b>(as applied to the Valuation Date)</b>	N/A	The Valuation Date will be the original date that, but for the Disruption Event, would have been the Settlement Date.
Section 5.2(c)(x)(A) Non-Deliverable Substitute <b>(as applied to the Settlement Rate)</b>	N/A	The Settlement Rate will be determined as if the Settlement Rate Option were Currency-Reference Dealers.
Section 5.2(c)(x)(A) Non-Deliverable Substitute <b>(as applied to the Settlement Date)</b>	N/A	The Settlement Date will be the date determined in accordance with the relevant market practice with respect to such a Non-Deliverable Transaction.
Section 5.2(c)(x)(A) Non-Deliverable Substitute <b>(as applied to the Reference Currency)</b>	N/A	The Reference Currency will be the Event Currency.
Section 5.2(c)(x)(A) Non-Deliverable Substitute <b>(as applied to the Settlement Currency)</b>	N/A	The Settlement Currency will be the Non-Event Currency.
Section 5.2(c)(x)(A) Non-Deliverable Substitute <b>(as applied to the Reference Currency Notional Amount)</b>	N/A	The Reference Currency Notional Amount will equal the Event Currency Amount.
Section 5.2(c)(x)(A) Non-Deliverable Substitute <b>(as applied to the Notional Amount)</b>	N/A	The Notional Amount will equal the Non-Event Currency Amount.

SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
Section 5.2(c)(x)(B) Non-Deliverable Substitute <b>(as applied to the FX Transaction Forward Rate)</b>	<i>The FX Transaction Forward Rate.</i>	The currency exchange rate, expressed as an amount of Event Currency per one unit of Non-Event Currency, obtained by dividing the Event Currency Amount by the Non-Event Currency Amount.
Section 5.2(c)(xi)(B) Settlement Postponement	<i>Whether Escrow Arrangement is applicable to the Transaction.</i>	The next Disruption Fallback specified in the related Confirmation will apply to that Transaction if the original Disruption Event continues for the Maximum Days of Disruption.
Section 5.2(e)(i) Disruption Fallbacks	N/A	See Disruption Events and Fallbacks Flow Chart
Section 5.4(c) Event Currency <b>(as applied to a Non-Deliverable Transaction)</b>	<i>The Event Currency.</i>	The Reference Currency.
Section 5.4(d) Event Currency Amount <b>(as applied to a Deliverable Transaction)</b>	<i>The Event Currency Amount.</i>	The quantity of Event Currency that is owed by the Event Currency Seller on the Settlement Date.
Section 5.4(e) Event Currency Buyer <b>(as applied to a Deliverable Transaction)</b>	<i>The Event Currency Buyer.</i>	The party to which the Event Currency is owed on the Settlement Date.
Section 5.4(e) Event Currency Buyer <b>(as applied to a Non-Deliverable Transaction where the Event Currency is the Reference Currency)</b>	<i>The Event Currency Buyer.</i>	The Reference Currency Buyer.

SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
Section 5.4(e) Event Currency Buyer (as applied to a Non-Deliverable Transaction where the Event Currency is the Settlement Currency)	<i>The Event Currency Seller.</i>	The Reference Currency Seller.
Section 5.4(g) Event Currency Seller (as applied to a Deliverable Transaction)	<i>The Event Currency Seller.</i>	The party which owes the Event Currency on the Settlement Date.
Section 5.4(g) Event Currency Seller (as applied to a Non-Deliverable Transaction where the Event Currency is the Reference Currency)	<i>The Event Currency Seller.</i>	The Reference Currency Seller.
Section 5.4(g) Event Currency Seller (as applied to a Non-Deliverable Transaction where the Event Currency is the Settlement Currency)	<i>The Event Currency Seller.</i>	The Reference Currency Buyer.
Section 5.4(n) Minimum Amount (as applied to Illiquidity)	<i>The Minimum Amount.</i>	The Reference Currency Notional Amount.
Section 5.4(n) Minimum Amount (as applied to Specific Inconvertibility)	<i>The Minimum Amount.</i>	The Event Currency equivalent of US \$1.

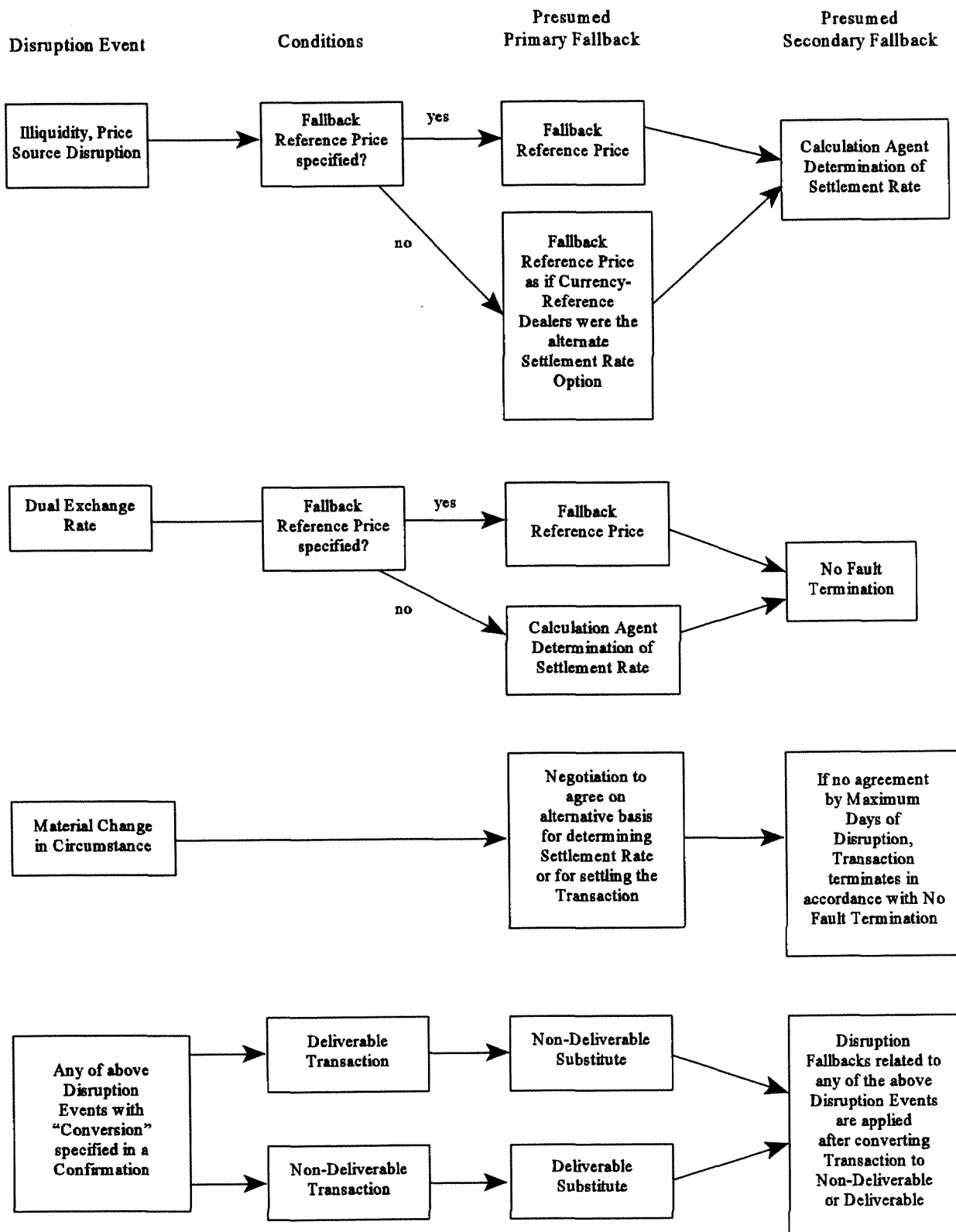
SECTION	INFORMATION NOT SPECIFIED	PRESUMPTION
Section 5.4(s) Relevant Affiliate (as applied to any Party)	<i>The Relevant Affiliate.</i>	Any entity controlled, directly or indirectly, by such party, any entity that controls, directly or indirectly, such party or any entity directly or indirectly under common control with such party.

## VI. FLOW CHART OF DISRUPTION EVENTS AND PRESUMED FALLBACKS



\* No Fault Termination is the final presumed fallback for all Disruption Events.







**Sample Confirmation 1: This sample confirmation documents a Deliverable FX Transaction subject to the Benchmark Obligation Default Disruption Event.**

*Heading for Letter*

[Letterhead of Party A]

[Date]

[Name and Address of Party B]

Dear [ ]:

The purpose of this letter agreement (this “Confirmation”) is to confirm the terms and conditions of the Transaction entered into between us on the Trade Date specified below (the “Transaction”). This Confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

The definitions and provisions contained in the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee) are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms a part of, and is subject to, [Master Agreement] dated as of [DATE], as amended and supplemented from time to time (the “Agreement”), between Party A (“Party A”) and Party B (“Party B”). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the Transaction to which this Confirmation relates are as follows:

Trade Date:	[DATE]
Amount and currency payable by Party A:	USD [ ]
Amount and currency payable by Party B:	CURRENCY A [ ]
Settlement Date:	[DATE]
3. Additional terms of the particular Transaction to which this Confirmation relates are as follows:	
Event Currency:	CURRENCY A
Event Currency Amount:	CURRENCY A [ ]
Event Currency Buyer:	Party A
Event Currency Seller:	Party B

4. The Disruption Events and Fallbacks applicable to the particular Transaction to which this Confirmation relates are as follows:

(a)	Benchmark Obligation Default:	Applicable
	Benchmark Obligation:	[OBLIGATION]
	Specified Value:	[Market]
	Maximum Days of Disruption:	[NUMBER] Business Days
5.	Calculation Agent:	[PARTY A OR PARTY B OR A THIRD PARTY]
6.	Account Details:	

Account for payments to Party A:

Account for payments to Party B:

7. Offices:

(a) The Office of Party A for the Transaction is [OFFICE]; and

(b) The Office of Party B for the Transaction is [OFFICE].

8. Business Day for Settlement Date: [CITY]

This Confirmation supersedes and replaces any other confirmation (including a SWIFT MT300, SWIFT MT305 or phone confirmation), if any, sent in connection with this Transaction on or prior to the date hereof.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours sincerely,

PARTY A

By: \_\_\_\_\_

Name:

Title:

Confirmed as of the date  
first above written:

PARTY B

By: \_\_\_\_\_

Name:

Title:

Comments:

This sample confirmation provides an illustration of a Deliverable FX Transaction with Benchmark Obligation Default as the specified Disruption Event. The parties have not specified any Disruption Fallbacks, therefore, the presumptions in the Definitions will apply to this Transaction.

If a Benchmark Obligation Default occurs and is continuing on the day that is the Settlement Day, Local Asset Substitute-Gross and Settlement Postponement will be the applicable Disruption Fallbacks (§5.2(e)(i)(B)). Local Asset Substitute-Gross provides that the Event Currency Seller will Deliver Benchmark Obligations with the Specified Value equal to the Event Currency Amount to an account designated by the Event Currency Buyer and the Event Currency Buyer will payan amount in the Non-Event Currency equal to the Non-Event Currency Amount to an account designated by the Event Currency Seller (§5.2(c)(vi)(A)).

Delivery of the Benchmark Obligations will occur on the first date (the Physical Settlement Date) such delivery would customarily take place for the particular Benchmark Obligations. The Event Currency Buyer will pay any amount payable by it on the Physical Settlement Date including interest on such amount at a rate per annum equal to the Event Currency Seller's cost of funding that amount from the original Settlement Date to, but excluding, the actual date of payment of that amount (§5.3(a)). See §5.3(c)-(e) for additional terms relating to the Delivery of Benchmark Obligations.

If an event makes it impossible or illegal to Deliver the Benchmark Obligations on the Physical Settlement Date, the Benchmark Obligations will be Delivered on the first succeeding day on which Delivery can take place unless such an event prevents Delivery for five Business Days. Because the confirmation does not specify otherwise, the Transaction will settle in accordance with the next presumed Disruption Fallback, Settlement Postponement (§5.3(b)). If the parties are still unable to settle the Transaction after the Maximum Days of Disruption, the Transaction will terminate in accordance with the No Fault Termination Disruption Fallback (§5.2(c)(ix)).

**Sample Confirmation 2: This sample confirmation documents a Deliverable Currency Option Transaction with General Inconvertibility and General Non-Transferability Disruption Events.**

*Heading for Letter*

[Letterhead of Party A]

[Date]

[Name and Address of Party B]

Dear [ ]:

The purpose of this letter agreement (this “Confirmation”) is to confirm the terms and conditions of the Transaction entered into between us on the Trade Date specified below (the “Transaction”). This Confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

The definitions and provisions contained in the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee) are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms a part of, and is subject to, [Master Agreement] dated as of [DATE], as amended and supplemented from time to time (the “Agreement”), between Party A (“Party A”) and Party B (“Party B”). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the Transaction to which this Confirmation relates are as follows:

Trade Date:	[TRADE DATE]
Buyer:	Party A
Seller:	Party B
Currency Option Style:	American
Currency Option Type:	[CURRENCY A] Call/USD Put
Call Currency and Call Currency Amount:	CURRENCY A [ ]
Put Currency and Put Currency Amount:	USD [ ]
Strike Price:	[ ] CURRENCY A/USD
Expiration Date:	[DATE]
Expiration Time:	[TIME]
Settlement Date:	[DATE]
Premium:	[ ]
Premium Payment Date:	[DATE]

3. Additional terms of the particular Transaction to which this Confirmation relates are as follows:

Event Currency:	CURRENCY A
Event Currency Amount:	CURRENCY A [ ]

Event Currency Buyer: Party A

Event Currency Seller: Party B

4. The Disruption Events and Fallbacks applicable to the particular Transaction to which this Confirmation relates are as follows:

- (a) General Inconvertibility: Applicable
  - Minimum Amount: CURRENCY A [            ]
  - Maximum Days of Disruption: [NUMBER] Business Day(s)
- (b) General Non-Transferability: Applicable
  - Maximum Days of Disruption: [NUMBER] Business Day(s)
- 5. Calculation Agent: [Party A or Party B or a third party]
- 6. Account Details:
  - Account for payments to Party A:
  - Account for payments to Party B:
- 7. Offices:
  - (a) The Offices of Party A for the Transaction are [OFFICES]; and
  - (b) The Offices of Party B for the Transaction are [OFFICES].

This Confirmation supersedes and replaces any other confirmation (including a SWIFT MT300, SWIFT MT305 or phone confirmation), if any, sent in connection with this Transaction on or prior to the date hereof.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours sincerely,

PARTY A

By: \_\_\_\_\_  
Name:  
Title:

Confirmed as of the date  
first above written:

PARTY B

By: \_\_\_\_\_  
Name:  
Title:

Comments:

This sample confirmation provides an illustration of a Deliverable Currency Option with General Inconvertibility and General Non-Transferability Disruption Events. Because the parties did not specify any Disruption Fallbacks, the presumptions in the Definitions will apply to the Transaction.

In the event of General Inconvertibility and General Non-Transferability Disruption Events, the Disruption Fallbacks discussed below will apply (§5.2(e)(i)(A)). The parties will first attempt to settle according to Non-Deliverable Substitute (§5.2(c)(x)). Non-Deliverable Substitute provides that the Valuation Date will be the date that would have been the Settlement Date but for the occurrence of the Disruption Event. The new Settlement Date will be determined in accordance with the market practice for Non-Deliverable Transactions involving Currency A. The Settlement Rate will be determined as if the Settlement Rate Option were Currency-Reference Dealers, and the Settlement Currency will be the Non-Event Currency. The Reference Currency will be the Event Currency and the Reference Currency Notional Amount will equal the Event Currency Amount. Since the parties did not specify which Currency-Reference Dealers would be used, the Reference Dealers will be deemed to be four leading dealers in the relevant market selected by the Calculation Agent (§4.6(c)). The Calculation Agent will request from the Specified Office of each Reference Dealer a firm quotation of its Specified Rate for a transaction where the amount of Reference Currency equals the Specified Amount. The Specified Amount will be deemed to be the amount of Reference Currency equal to the Reference Currency Notional Amount (§4.6(e)). Since the Reference Currency Notional Amount is not specified in the Confirmation, it will be the quantity of Reference Currency equal to the Notional Amount multiplied by the Forward Rate (§1.21(b)). The Forward Rate equals the Event Currency Amount divided by the Non-Event Currency Amount. *See Sample Confirmation 3 for a discussion of the Settlement Rate Option, Currency-Reference Dealers.*

If the parties cannot settle by converting the Transaction into a Non-Deliverable one, the Transaction will settle in accordance with the Disruption Fallback, Settlement Postponement (§5.2(c)(xi)). Accordingly, the Settlement Date will be postponed until the first Business Day after the Disruption Event ceases to exist. In addition, each party is required to use reasonable efforts to deposit the payment that such party would have made under the Transaction in a segregated interest bearing account or otherwise invest such amount in a mutually agreeable investment.

If the applicable Disruption Event continues to exist for the Maximum Days of Disruption selected by the parties, then the Transaction will terminate in accordance with the provisions of No Fault Termination Disruption Fallback (§5.2(f)).

**Sample Confirmation 3: This sample confirmation documents a Non-Deliverable FX Transaction with Price Source Disruption specified.<sup>1</sup>**

*Heading for Letter*

[Letterhead of Party A]

[Date]

[Name and Address of Party B]

Dear [ ]:

The purpose of this letter agreement (this “Confirmation”) is to confirm the terms and conditions of the Transaction entered into between us on the Trade Date specified below (the “Transaction”). This Confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

The definitions and provisions contained in the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee) are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms a part of, and is subject to, [Master Agreement] dated as of [DATE], as amended and supplemented from time to time (the “Agreement”), between Party A (“Party A”) and Party B (“Party B”). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the Transaction to which this Confirmation relates are as follows:

Trade Date:	[DATE]
Reference Currency:	[CURRENCY A]
Reference Currency Notional Amount: <sup>2</sup>	CURRENCY A [ ]
Notional Amount: <sup>2</sup>	USD [ ]
Forward Rate: <sup>2</sup>	[ ] CURRENCY A/USD
Reference Currency Buyer:	Party A
Reference Currency Seller:	Party B
Settlement Date:	[DATE]
Settlement:	Non-Deliverable
Settlement Currency:	USD
Valuation Date:	[DATE]

<sup>1</sup> Price Source Disruption is presumed to apply to a Non-Deliverable Transaction (§5.1(e)(i)). Accordingly, parties need not specify such event in their Confirmation for it to apply to a Non-Deliverable Transaction. Nonetheless, for the sake of additional clarity, many market participants explicitly state in their Confirmation that Price Source Disruption applies to a Non-Deliverable Transaction.

<sup>2</sup> Two of the following three terms must be specified in the Confirmation: Reference Currency Notional Amount, Notional Amount and Forward Rate.



Settlement Rate Option: [ ]

3. The Disruption Events and Fallbacks applicable to the particular Transaction to which this Confirmation relates are as follows:

Event Currency: <sup>3</sup>	Currency A
Price Source Disruption: <sup>1</sup>	Applicable
Currency-Reference Dealers:	[LIST FOUR DEALERS]
Specified Rate:	[BID/OFFER/AVERAGE OF BID AND OFFER]
Specified Amount:	[ ]
Specified Time:	[TIME]

4. Calculation Agent: [PARTY A OR PARTY B OR A THIRD PARTY]

5. Account Details:

Account for payments to Party A:

Account for payments to Party B:

6. Offices:

(a) The Office of Party A for the Transaction is [OFFICE(S)]; and

(b) The Office of Party B for the Transaction is [OFFICE(S)].

7. Business Day Applicable to Valuation Date: [CITY]

Business Day Applicable to Settlement Date: [CITY]

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<sup>3</sup> For a Non-Deliverable Transaction, the Event Currency is presumed to be the Reference Currency (§ 5.4(e)). Nonetheless, for the sake of additional clarity, parties may choose to specify that the Event Currency is the Reference Currency in their Confirmation.

This Confirmation supersedes and replaces any other confirmation (including a SWIFT MT300, SWIFT MT305 or phone confirmation), if any, sent in connection with this Transaction on or prior to the date hereof.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours sincerely,

PARTY A

By: \_\_\_\_\_  
Name:  
Title:

Confirmed as of the date  
first above written:

PARTY B

By: \_\_\_\_\_  
Name:  
Title:

Comments:

This sample confirmation provides an illustration of a Non-Deliverable FX Transaction with Price Source Disruption specified. The parties did not need to specify that such event applies because they incorporated the 1998 FX and Currency Option Definitions, and therefore, Price Source Disruption is deemed to apply (§5.1(e)(i)). Nonetheless, for the sake of additional clarity, many market participants choose to specify in their Confirmations that such event applies. Unless explicitly overridden, all of the presumptions in the Definitions applicable to Price Source Disruption will apply to this Transaction, including that Annex A is presumed to be incorporated as amended through the Trade Date (§4.2).

In the event of a Price Source Disruption, the Calculation Agent will determine the Settlement Rate according to the Settlement Rate Option, Currency-Reference Dealers (§5.2(e)(i)(E)(1)). The parties have specified which Reference Dealers would be used for the Fallback Reference Price<sup>4</sup>, therefore the Calculation Agent will request the Specified Office of each of the named dealers to provide a firm quotation of its Specified Rate for a transaction where the amount of Reference Currency equals the Specified Amount. The Specified Amount will be deemed to be the amount of Reference Currency equal to the Reference Currency Notional Amount (§4.6(e)). If the Reference Currency Notional Amount was not specified in the Confirmation, it would be the quantity of Reference Currency equal to the Notional Amount multiplied by the Forward Rate (§1.21(b)).

Since the parties did not select a Specified Office, in most cases it will be deemed to be an office or branch of the Reference Dealer located in the Principal Financial Center of the Reference Currency. However, if the rate determined pursuant to the specified Settlement Rate Option was an “off-shore” rate, the Specified Office would be deemed to be the office or branch of the Reference Dealer selected by the Calculation Agent that is located in any major market for the purchase and sale of the Reference Currency and the Settlement Currency outside the country where the Reference Currency is the lawful currency (§4.6(g)).

If no quotations were available from the on-shore office or branch of each of the Reference Dealers due to the occurrence of a Price Source Disruption, the Specified Office will be the office or branch of the Reference Dealer selected by the Calculation Agent that is located in any major market for the purchase and sale of the Reference Currency and the Settlement Currency outside the country where the Reference Currency is the lawful currency (§4.6(g)).

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<sup>4</sup> If the parties did not specify Reference Dealers, the dealers would be deemed to be four leading dealers in the relevant market selected by the Calculation Agent (§4.6(c)),

The rate will be the bid, offer or average of the bid and offer, as specified in the Confirmation, and will be determined at the time specified in the Confirmation. If the parties did not select a Specified Time, the Calculation Agent would choose the time at which to determine the rate for the Valuation Date (§ 4.5(e)(iv)). If the parties did not select a Specified Rate, it will be deemed to be the average of the Reference Currency bid and offer rates (§ 4.6(h)).

If the Settlement Rate cannot be determined using the Settlement Rate Option, Currency-Reference Dealers, the Calculation Agent will determine such rate taking into consideration all available information that in good faith it deems relevant (§ 5.2(e)(i)(E)(2)).

**Sample Confirmation 4: This sample confirmation documents a Non-Deliverable FX Transaction with Price Source Disruption and Disruption Fallbacks specified.<sup>1</sup>**

*Heading for Letter*

[Letterhead of Party A]

[Date]

[Name and Address of Party B]

Dear [ ]:

The purpose of this letter agreement (this “Confirmation”) is to confirm the terms and conditions of the Transaction entered into between us on the Trade Date specified below (the “Transaction”). This Confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

The definitions and provisions contained in the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee) are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms a part of, and is subject to, [Master Agreement] dated as of [DATE], as amended and supplemented from time to time (the “Agreement”), between Party A (“Party A”) and Party B (“Party B”). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the Transaction to which this Confirmation relates are as follows:

Trade Date:	[DATE]
Reference Currency:	[CURRENCY A]
Reference Currency Notional Amount: <sup>2</sup>	CURRENCY A [ ]
Notional Amount: <sup>2</sup>	USD[ ]
Forward Rate: <sup>2</sup>	[ ] CURRENCY A/USD
Reference Currency Buyer:	Party A
Reference Currency Seller:	Party B
Settlement Date:	[DATE]
Settlement:	Non-Deliverable
Settlement Currency:	USD
Valuation Date:	[DATE]

<sup>1</sup> Price Source Disruption is presumed to apply to a Non-Deliverable Transaction (§5.1(e)(i)). Accordingly, parties need not specify such event in their Confirmation for it to apply to a Non-Deliverable Transaction. Nonetheless, for the sake of additional clarity, many market participants explicitly state in their Confirmation that Price Source Disruption applies to a Non-Deliverable Transaction.

<sup>2</sup> Two of the following three terms must be specified in the Confirmation: Reference Currency Notional Amount, Notional Amount and Forward Rate.

Settlement Rate Option: [OPTION]

Date of Annex A: March 1998

3. The Disruption Events and Fallbacks applicable to the particular Transaction to which this Confirmation relates are as follows:

Event Currency: <sup>3</sup>	Currency A
Price Source Disruption: <sup>1</sup>	Applicable
Disruption Fallback:	1. Fallback Reference Price: Currency -Implied Rate (Local Asset) or CURA2
Local Asset:	[DEBT SECURITY]
Reference Dealers:	[LIST FOUR DEALERS]
Specified Time:	[TIME]
	2. Fallback Reference Price: Currency -Mutual Agreement

4. Calculation Agent: [PARTY A OR PARTY B OR A THIRD PARTY]

5. Account Details:

Account for payments to Party A:

Account for payments to Party B:

6. Offices:

(a) The Office of Party A for the Transaction is [OFFICE(S)]; and

(b) The Office of Party B for the Transaction is [OFFICE(S)].

7. Business Day Applicable to Valuation Date: [CITY]

Business Day Applicable to Settlement Date: [CITY]

This Confirmation supersedes and replaces any other confirmation (including a SWIFT MT300, SWIFT MT 305 or phone confirmation), if any, sent in connection with this Transaction on or prior to the date hereof.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours sincerely,

PARTY A

By: \_\_\_\_\_

Name:

Title:

<sup>3</sup> For a Non-Deliverable Transaction, the Event Currency is presumed to be the Reference Currency (§ 5.4(e)). Nonetheless, for the sake of additional clarity, parties may choose to specify that the Event Currency is the Reference Currency in their Confirmation.

Confirmed as of the date  
first above written:

PARTY B

By: \_\_\_\_\_  
Name:  
Title:

Comments:

This sample confirmation provides an illustration of a Non-Deliverable FX Transaction with Price Source Disruption specified.<sup>4</sup> The parties did not need to specify that such event applies because they incorporated the 1998 FX and Currency Option Definitions, and therefore, Price Source Disruption is deemed to apply (§ 5.1(e)(i)). Nonetheless, for the sake of additional clarity, many market participants choose to specify in their Confirmations that such event applies. The Confirmation provides that the Settlement Rate will be determined in accordance with the applicable Settlement Rate Option as set forth in the March 1998 version of Annex A, thereby overriding the presumption in Section 4.2 that Annex A is incorporated as amended through the Trade Date.

The parties have specified Disruption Fallbacks for the Price Source Disruption Event, therefore the presumed Disruption Fallbacks in Section 5.2(e) of the Definitions will not apply to this Transaction (§ 5.2(e)(i)). In the event of a Price Source Disruption, the Calculation Agent will determine the Settlement Rate according to the first of the two Settlement Rate Options specified as the Fallback Reference Price that is not subject to a Disruption Event. Accordingly, the Settlement Rate will be determined using the Settlement Rate Option, Currency-Implied Rate (Local Asset) provided that such option is not subject to a Disruption Event. The Local Asset selected should be one for which prices are available in the Reference Currency and the Settlement Currency, such as Brady Bonds for transactions in which the Settlement Currency is the U.S. Dollar.

The parties have specified which Reference Dealers would be used for the Fallback Reference Price<sup>4</sup>, therefore the Calculation Agent will request each of the named dealers to provide a firm quotation of its bid and offer price (quoted in the Reference Currency and the Settlement Currency) for an amount of Local Assets whose face value equals the Specified Amount. The Specified Amount will be deemed to be the amount equal to the Reference Currency Notional Amount (§ 4.6(e)). If the Reference Currency Notional Amount was not specified in the Confirmation, it would be the quantity of Reference Currency equal to the Notional Amount multiplied by the Forward Rate (§ 1.21(b)).

The parties did not select a Specified Time, the Calculation Agent would choose the time at which to determine the rate for the Valuation Date (§ 4.5(e)(iv)).

If the Settlement Rate cannot be determined using the Settlement Rate Option, Currency-Implied Rate (Local Asset), the Settlement Rate will be determined in accordance with the Settlement Rate Option, Currency-Mutual Agreement, and therefore will be the rate mutually agreed to by the parties.

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<sup>4</sup> If the parties did not specify Reference Dealers, the dealers would be deemed to be four leading dealers in the relevant market selected by the Calculation Agent (§ 4.6(c)).

**Sample Confirmation 5: This sample confirmation documents a Non-Deliverable FX Transaction with a Price Materiality Disruption Event.**

*Heading for Letter*

[Letterhead of Party A]

[Date]

[Name and Address of Party B]

Dear [ ]:

The purpose of this letter agreement (this “Confirmation”) is to confirm the terms and conditions of the Transaction entered into between us on the Trade Date specified below (the “Transaction”). This Confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

The definitions and provisions contained in the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee) are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms a part of, and is subject to, [Master Agreement] dated as of [DATE], as amended and supplemented from time to time (the “Agreement”), between Party A (“Party A”) and Party B (“Party B”). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the Transaction to which this Confirmation relates are as follows:

Trade Date:	[TRADE DATE]
Reference Currency:	Currency A
Reference Currency Notional Amount: <sup>1</sup>	CURRENCY A [ ]
Notional Amount: <sup>1</sup>	USD [ ]
Forward Rate: <sup>1</sup>	[ ] CURRENCY A/USD
Reference Currency Buyer:	Party B
Reference Currency Seller:	Party A
Settlement Date:	[DATE]
Settlement:	Non-Deliverable
Settlement Currency:	USD
Valuation Date:	[DATE]
Settlement Rate Option:	[OPTION]

3. The Disruption Events and Fallbacks applicable to the particular Transaction to which this Confirmation relates are as follows:

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<sup>1</sup> Two of the following three terms must be specified in the Confirmation: Reference Currency Notional Amount, Notional Amount and Forward Rate.

## APPENDIX A

Event Currency: <sup>2</sup>	Currency A
Price Materiality:	Applicable
Primary Rate:	[SETTLEMENT RATE OPTION SPECIFIED ABOVE]
Secondary Rate:	CURRENCY-REFERENCE DEALERS Reference Dealers: [LIST DEALERS] Specified Office: New York Specified Time: [TIME]
Price Materiality Percentage;	[    ]%
4. Calculation Agent:	[PARTY A OR PARTY B OR A THIRD PARTY]
5. Account Details:	
Account for payments to Party A:	
Account for payments to Party B:	
6. Offices:	
(a) The Office of Party A for the Transaction is [OFFICE]; and	
(b) The Office of Party B for the Transaction is [OFFICE].	

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<sup>2</sup> For a Non-Deliverable Transaction, the Event Currency is presumed to be the Reference Currency (§ 5.4(e)). Nonetheless, for the sake of additional clarity, parties may choose to specify that the Event Currency is the Reference Currency in their Confirmation.



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This Confirmation supersedes and replaces any other confirmation (including a SWIFT MT300, SWIFT MT305 or phone confirmation), if any, sent in connection with this Transaction on or prior to the date hereof.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours sincerely,

PARTY A

By: \_\_\_\_\_  
 Name:  
 Title:

Confirmed as of the date  
 first above written:

PARTY B

By: \_\_\_\_\_  
 Name:  
 Title:

Comments:

This sample confirmation provides an illustration of a Non-Deliverable FX Transaction with Price Materiality as a specified Disruption Event. Because the Transaction is Non-Deliverable, Price Source Disruption is also deemed to apply, along with its presumed Fallbacks, even though the parties did not specify Price Source Disruption as an applicable Disruption Event.<sup>3</sup>

If the Primary Rate and the Secondary Rate differ by at least the percentage specified, the Calculation Agent will determine the Settlement Rate (§5.2(e)(i)(E)(2)) according to the Settlement Rate Option Currency-Reference Dealers (§5.2(e)(i)(E)(1)). If the parties did not specify which Reference Dealers would be used for the Currency-Reference Dealer Settlement Rate Option, the Reference Dealers will be deemed to be four leading dealers in the relevant market selected by the Calculation Agent (§4.6(c)). The Calculation Agent will request from the Specified Office, in this case the New York office, of each Reference Dealer to provide a firm quotation of its Specified Rate for a transaction where the amount of Reference Currency equals the Specified Amount. *See* Sample Confirmation 3 for a discussion of the Currency-Reference Dealers Settlement Rate Option.

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<sup>3</sup> As noted in Sample Confirmation 1, for the sake of additional clarity, many market participants instead choose to explicitly state that Price Source Disruption applies to a Non-Deliverable Transaction. *See* Sample Confirmation 1 for a discussion of the Price Source Disruption Event.

## Sample Confirmation 6: This sample confirmation documents a Non-Deliverable Currency Option Transaction with Governmental Authority Default, Illiquidity and Nationalization Disruption Events and no Price Source Disruption Event.

*Heading for Letter*

[Letterhead of Party A]

[Date]

[Name and Address of Party B]

Dear [ ]:

The purpose of this letter agreement (this “Confirmation”) is to confirm the terms and conditions of the Transaction entered into between us on the Trade Date specified below (the “Transaction”). This Confirmation constitutes a “Confirmation” as referred to in the Agreement specified below.

The definitions and provisions contained in the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee) are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms a part of, and is subject to, [Master Agreement] dated as of [DATE], as amended and supplemented from time to time (the “Agreement”), between Party A (“Party A”) and Party B (“Party B”). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the Transaction to which this Confirmation relates are as follows:

Trade Date:	[DATE]
Buyer:	Party B
Seller:	Party A
Currency Option Style:	European
Currency Option Type:	CURRENCY A Put/USD Call
Put Currency and Put Currency Amount	CURRENCY A [ ]
Strike Price:	[ ] CURRENCY A/USD
Reference Currency:	CURRENCY A
Settlement Currency:	USD
Settlement Rate Option:	[OPTION]
Expiration Date:	[DATE]
Expiration Time:	[TIME] (local time in [CITY])
Settlement:	Non-Deliverable
Settlement Date:	[DATE]
Premium:	[ ]
Premium Payment Date:	[DATE]

3. Additional terms of the particular Transaction to which this Confirmation relates are as follows:

Event Currency:	CURRENCY A
Event Currency Amount:	CURRENCY A [ ]
Event Currency Buyer:	Party A
Event Currency Seller:	Party B

4. The Disruption Events and Fallbacks applicable to the particular Transaction to which this Confirmation relates are as follows:

(a) Price Source Disruption:	Not Applicable
(b) Governmental Authority Default:	Applicable
Specified Value:	Face
Maximum Days of Disruption:	[NUMBER] Business Days
(c) Illiquidity:	Applicable
Minimum Amount:	CURRENCY A [AMOUNT]
Fallback Reference Price:	[SETTLEMENT RATE OPTION]
Illiquidity Valuation Date:	[DATE]

(d) Nationalization:	
Maximum Days of Disruption:	[NUMBER] Business Days

5. Calculation Agent:	[PARTY A OR PARTY B OR A THIRD PARTY]
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6. Account Details:	
Account for payments to Party A:	
Account for payments to Party B:	

7. Offices:	
(a) The Offices of Party A for the Transaction are [OFFICES]; and	
(b) The Office of Party B for the Transaction is [OFFICE].	

8. Business Day for Valuation Date:	[CITY]
Business Day for Settlement Date:	[CITY]

This Confirmation supersedes and replaces any other confirmation (including a SWIFT MT300, SWIFT MT305 or phone confirmation), if any, sent in connection with this Transaction on or prior to the date hereof.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us or by sending to us a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates your agreement to those terms.

Yours sincerely,

PARTY A

By: \_\_\_\_\_

Name:

Title:

Confirmed as of the date  
first above written:

PARTY B

By: \_\_\_\_\_

Name:

Title:

Comments:

This sample confirmation provides an illustration of a Non-Deliverable Currency Option Transaction with Governmental Authority Default, Illiquidity and Nationalization Disruption Events. Price Source Disruption will not apply to the Transaction because the parties have specified that it is not applicable.

If the relevant Governmental Authority defaults on any of its debt obligations or indebtedness for borrowed money, either as primary obligor or guarantor, and such default is continuing on the day that is the Settlement Date, the Transaction will settle in accordance with either the Local Asset Substitute-Gross or the Settlement Postponement Disruption Fallback (§5.2(e)(i)(B)). Local Asset Substitute-Gross provides that the Event Currency Seller will Deliver Benchmark Obligations, which in the case of Governmental Authority Default can be any obligation subject to that default, with a face value equal to the Event Currency Amount to an account designated by the Event Currency Buyer and the Event Currency Buyer will deliver its required payment to an account designated by the Event Currency Seller (§5.2(c)(vi)(A)). See §5.3(c)-(e) for additional terms relating to the Delivery of Benchmark Obligations.

If the Calculation Agent is unable to obtain a firm quote for the Minimum Amount of Currency A on the Valuation Date using the specified Settlement Rate Option, an Illiquidity Disruption Event will have occurred. The Calculation Agent will then look to the Settlement Rate Option specified as the Fallback Reference Price<sup>1</sup>, on the Illiquidity Valuation Date in order to settle the Transaction. If the Calculation Agent is unable to obtain a firm quote for the Minimum Amount using the Fallback Reference Price, the Calculation Agent will determine the Settlement Rate taking into consideration all available information that in good faith it deems relevant (§5.2(e)(i)(E)(2)).

If substantially all of either party's assets are expropriated, confiscated, requisitioned or nationalized by the relevant Governmental Authority, then a Nationalization Disruption Event will have occurred. If such situation is continuing on the Settlement Date, then the Settlement Postponement and Assignment of Claim Disruption Fallbacks will be automatically triggered. Accordingly, the Settlement Date will be postponed until the first Business Day after the Disruption Event ceases to exist. In addition, each party is required to use reasonable efforts to deposit the payment that such party would have made under the Transaction in a segregated interest bearing account or otherwise invest such amount in a mutually agreeable investment.

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<sup>1</sup> If parties do not specify a Settlement Rate Option for the Fallback Reference Price, the Definitions provide that such option will be Currency-Reference Dealers (§5.2(e)(i)(E)). See Sample Confirmation 3 for a complete discussion of the Currency-Reference Dealers Settlement Rate Option.

If the Nationalization Disruption Event continues for the Maximum Days of Disruption, then the Transaction will settle in accordance with the Assignment of Claim Disruption Fallback. Pursuant to this fallback, the nationalized party will assign either its claim against the governmental authority or, if such assignment is not permitted under the relevant law, a beneficial interest in its claim to the other party to the Transaction.

If all three Disruption Events occurred and were continuing on the Valuation Date or Settlement Date, as applicable, the Definitions provide that the Disruption Fallbacks applicable for the Illiquidity Disruption Event must be the first fallbacks applied (§5.2(g)). The next fallbacks applied would be the fallbacks for the Nationalization Disruption Event. If the Transaction were to settle in accordance with the Assignment of Claim Disruption Fallback, then the fallbacks applicable in the case of a Governmental Authority Default need not be applied (§5.2(g)(ii)).



**New Rate Source Definitions for  
Annex A of the Definitions**

On September 11, 1998, ISDA, EMTA and the FX Committee jointly announced the addition of another Russian Ruble rate source definition to Annex A of the 1998 FX and Currency Option Definitions.

The definition of “RUB CME-EMTA” and “RUB03” contained in subsection (C) to Section 4.5(b)(ii) of Annex A of the Definitions, effective as of September 11, 1998, was amended effective as of October 14, 1998, to read as follows:

“RUB CME-EMTA” and “RUB03” each means that the Spot Rate for a Rate Calculation Date will be the Russian Ruble/U.S. Dollar rate, expressed as the amount of Russian Rubles per one U.S. Dollar, for settlement on the same amount of Russian Rubles per one U.S. Dollar, for settlement on the same day, which is calculated by the Chicago Mercantile Exchange pursuant to its arrangement with the Emerging Markets Traders Association and which appears on the Reuters Screen EMTA Page for that Rate Calculation Date.

On February 3, 1999, ISDA, EMTA and the FX Committee jointly announced the addition of two new Brazilian Real rate source definitions to Annex A of the 1998 FX and Currency Option Definitions.

The following is the wording of the new definitions to be inserted in Section 4.5(c)(ii) as definitions (I) and (J), amending Annex A of the Definitions as of February 1, 1999:

- (I) “BRL PTAX” or “BRL09” each means that Spot Rate for a Rate Calculation Date will be the Brazilian Real/U.S. Dollar offered rate for U.S. Dollars, expressed as the amount of Brazilian Reals per one U.S. dollar, for settlement in two Business Days (where such days are Business Days in both Sao Paulo and New York) reported by the Banco Central de Brasil on SISBACEN Data System under transaction code PTAX-800 (“Consultas de Cambio” or Exchange Rate Inquiry), Option 5 (“Cotacoes para Contabilidade” or Rates for Accounting Purposes) as of 8:30 p.m., Sao Paulo time, on that Rate Calculation Date.
- (J) “BRL PTAX BRFR” or “BRL 10” each means that the Spot Rate for a Rate Calculation Date will be the Brazilian Real/U.S. Dollar offered rate for U.S. Dollars, expressed as the amount of Brazilian Reals per one U.S. Dollar, for settlement in two Business Days (where such days are Business Days in both Sao Paulo and New York) reported by the Banco Central de Brasil on SISBACEN Data System under transaction code PTAX-800 (“Consultas de Cambio” or Exchange Rate Inquiry), Option 5 (“Cotacoes para Contabilidade” or Rates for Accounting Purposes), which appears on the Reuters Screen BRFR Page at PTAX-800 as of 8:30 a.m., Sao Paulo time, on the first Business Day following that Rate Calculation Date.