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Managing Director and Senior Counsel

Deutsche Bank AG  
Legal Regulatory & Governance  
Theodor-Heuss-Allee 70  
60486 Frankfurt am Main, Germany

22 November 2010

Dear Holger,

**Re: Lessons Learned from the Current Financial Crisis – Summary Report**

The International Swaps and Derivatives Association (ISDA) appreciates the work that the European Financial Markets Lawyers Group has put into the publication of its Summary Report on the “Lessons Learned from the Current Financial Crisis”.

ISDA agrees that it is important to analyse the lessons learned from any period of market stress and to continue to review standard market documentation to ensure that the legal framework for derivatives remains as robust and certain as possible. ISDA also supports co-ordination amongst the various industry associations.

Since our foundation in 1985, one of our central missions has been to promote practices conducive to the efficient conduct of the business, including the development and maintenance of derivatives documentation. This commenced with the publication of the Code of Standard Wording, Assumptions and Provisions for Swaps in 1985, followed by master agreements in 1987 which were updated in 1992 with the publication of the 1992 ISDA Master Agreement (Multicurrency-Cross Border) and the 1992 ISDA Master Agreement (Local Currency-Single Jurisdiction) (together, the “1992 ISDA Master Agreements”).

In 1999, ISDA initiated a strategic documentation review of the 1992 ISDA Master Agreements and the ISDA Credit Support Documents. The subsequent development of the 2002 ISDA Master Agreement grew out of this strategic review and member experiences during periods of market turmoil in the late 1990s, including the Asian currency crisis, the Russian debt default and issues surrounding Long-Term Capital Management. The review also took into account the report of the Counterparty Risk Management Policy Group entitled “Improving Counterparty Risk Management Practices” published in June 1999.

ISDA continues to keep under review its documentation, including the 2002 ISDA Master Agreement and ISDA credit support documents, and has over the past few years continued to develop those documents in response to regulatory and / or market concerns supported by ISDA’s membership.

By way of example, in response to the report of the Counterparty Risk Management Group III (“CRMPG III”) entitled “Containing Systemic Risk: The Road to Reform” published on August 6, 2008, ISDA worked with the then major dealers (including various Lehman entities) to facilitate amendment by those dealers to the 1992 ISDA Master Agreements entered into between them, to replace the payment measure “Market Quotation” with the 2002 ISDA Master Agreement payment measure, “Close-out Amount”. This agreement was entered into on 29 August 2008 meaning that on the default of the various Lehman entities, dealers that had entered into the multilateral agreement were able to use the more flexible payment measure, Close-out Amount when calculating amounts due on the termination of the transactions under those agreements. ISDA subsequently published a protocol, which remains open for adherence, to facilitate the making of this amendment on a market wide basis.

Similarly, in the autumn of 2008, ISDA initiated a review of current collateral dispute resolution procedures with a view to developing an updated agreed standard industry approach for dealing with disputed OTC derivative collateral calls. The industry has committed to the Federal Reserve Bank of New York and bank supervisors to publish revised procedures together with a plan for implementation by 30 September 2010.

As a result of these initiatives, ISDA considers that the more significant issues highlighted by the report have been or are already being addressed.

ISDA has consulted some of its active member institutions (some of whom are also represented on the EFMLG) to ascertain feedback on their experiences of using the ISDA Master Agreement and credit support documents during the more recent financial crisis. The feedback received is that the agreement was robust and functioned soundly during the crisis. As such, any further review and amendment of the Master Agreement or credit support documents is not deemed a priority issue for ISDA at this time. We note the comments and suggestions raised in the report concerning termination notices and as and when our members deem a review of the Master Agreement an appropriate priority, we will of course ensure that these are discussed at that time.

I am copying this letter to Antonio Sainz de Vicuna at the ECB, as well as to Paul Richards at ICMA, Kevin McNulty at ISLA, Rob Toomey at SIFMA, Michael Raffan at Freshfields and Habib Motani at Clifford Chance.

Yours sincerely,



David Geen  
General Counsel