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To: ISDA Equity Committee and Equity Operations Working Group
Date: March 25, 2009

Below is a summary of the discussion that took place on Wednesday, March 25 (the "**NASDAQ MDE Call**") among market participants to discuss whether NASDAQ's cancellation of market on close orders on March 24 (the "**NASDAQ Event**") constitutes a Market Disruption Event.

This summary provides certain market consensus reached among the participants on the NASDAQ MDE Call and is not meant to be binding in any way. As with all market information and guidance that ISDA disseminates, parties are free to choose alternate means of addressing the event. Each member remains responsible for considering its own documentation and the specific terms of its own trades and forming its own conclusion on the proper interpretation of events.

Members discussed the following points:

- (A) Whether the NASDAQ Event constitutes a Market Disruption Event for transactions documented pursuant to the 2007 Americas Master Variance Swap Confirmation Agreement involving either (i) a share traded on NASDAQ ("**ISDA Share Variance Swap Transactions**") or (ii) an index for which the disrupted share(s) represent 20% of the overall level of such index ("**ISDA Index Variance Swap Transactions**" and together with ISDA Share Variance Swap Transactions, "**ISDA Variance Swap Transactions**")?;
- (B) For purposes of the 2002 ISDA Equity Definitions (the "**Equity Definitions**"), whether the NASDAQ Event constitutes an "Early Closure"?
- (C) For purposes of the Equity Definitions, whether the NASDAQ Event constitutes either an "Exchange Disruption" or "Trading Disruption", and if so, in what circumstances?

Any capitalized term not otherwise defined herein shall have the meaning assigned to such term in the Equity Definitions.



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(A) Whether the NASDAQ Event constitutes a Market Disruption Event for ISDA Variance Swap Transactions?

The strong market consensus of discussion participants was that the NASDAQ Event constitutes a Market Disruption Event for ISDA Variance Swap Transactions.^{1,2}

The group noted that the Market Disruption Event definition for ISDA Variance Swap Transactions allows for a determination of an Exchange Disruption or Trading Disruption by reference to the last 5 minutes prior to the close and without reference to materiality.

(B) For purposes of the Equity Definitions, whether the NASDAQ Event constitutes an "Early Closure"?

The market consensus of discussion participants was that the NASDAQ Event does not constitute an Early Closure as such term is defined in the Equity Definitions. The group noted that NASDAQ's communication regarding the NASDAQ Event did not announce the closure of the exchange prior to its Scheduled Closing Time but rather referred to technical glitches that resulted in the cancellation of certain orders.

(C) For purposes of the Equity Definitions, whether the NASDAQ Event constitutes an "Exchange Disruption" or "Trading Disruption", and if so, in what circumstances?

¹ Market participants suggested that the S&P 500 index transactions would be excluded since the percentage contribution of disrupted shares comprising the S&P 500 that trade on NASDAQ was below 20%. See Excel Spreadsheet for further information. Other indices will need to be analyzed similarly to see if a Market Disruption Event has occurred to a particular index.

² To the extent that a Market Disruption Event is determined with respect to an ISDA Variance Swap Transaction, the following are suggested adjustments to certain inputs for calculating Final Realized Volatility: N will not change; if Tuesday is an interim Observation Day (i.e., not the Valuation Date), P(t) on Tuesday will be deemed to be P(t) on Monday for trades that have already commenced; ; P(t) for trades with a Valuation Date on Tuesday will be the Wednesday closing level or price; P(t-1) for trades with a Trade Date on Tuesday that use "Closing Index Level" or "Closing Share Price" will be the 3:59.99 Nasdaq level or price; P(t-1) for trades with a Trade Date prior to Tuesday, but an Observation Start Date on Tuesday (i.e., a forward starting variance swap) that use "Closing Index Level" or "Closing Share Price" will be the Wednesday closing level or price.



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Under Section 6.3 of the Equity Definitions, a “materiality” standard is imposed in determining whether a Market Disruption Event, that is attributable to either an Exchange Disruption or Trading Disruption, has occurred at any time during the one hour period prior to the close.

The strong market consensus of discussion participants was that the NASDAQ Event constitutes an Exchange Disruption or Trading Disruption, with respect to any Valuation Date, where such valuation is based on the closing price, or any other date for which the price of the underlying share or index is pertinent in determining the value of the OTC product (including, but not limited to, averaging period, knock-in/knock-out dates, or the final Valuation Date at maturity); provided, that, for a plain-vanilla total return swap transaction, the NASDAQ Event does not constitute an Exchange Disruption or Trading Disruption for Valuation Dates in connection with interim reset dates.

The general market consensus of discussion participants was that the NASDAQ Event does not constitute an Exchange Disruption or Trading Disruption where the valuation price is based on Volume-Weighted Average Price (“**VWAP**”) since the effect of the disruption caused by the NASDAQ Event did not materially impact the calculation of the VWAP for the day.