

Notes

**PLI'S
NUTS AND BOLTS OF
FINANCIAL PRODUCTS**

Documenting OTC Derivative Transactions

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Summary

- ◆ Overview
- ◆ Review of the 1992 ISDA Master Agreement
- ◆ 2002 ISDA Master Agreement Comments

Overview

Notes

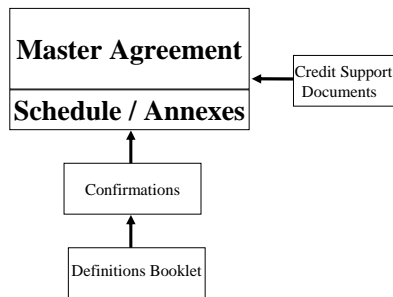
Purpose of the ISDA Master Agreement

- ◆ Establish standardized terms & conditions (aka "boilerplate")
 - Payment Obligations
 - Representations and Warranties
 - Covenants
 - Events of Default
 - Termination Mechanics

Purpose of the ISDA Master Agreement (cont.)

- ◆ Provide framework for tailoring terms to the needs and circumstances of the specific parties
 - Counterparty-Specific Credit Terms
 - Tax Representations
 - Specify Supporting Documentation
 - Legal
 - Financial
- ◆ Provide legal basis for "Close-Out Netting"

ISDA Master Agreement Structure



Notes

“Flavors” of ISDA Master Agreements

- ◆ 1987 ISDA Master Agreement
- ◆ 1992 ISDA Master Agreement
- ◆ 2002 ISDA Master Agreement

“Flavors” of Credit Support Annexes

- ISDA has published several versions of security or pledge agreements:
 - 1994 Credit Support Annex (Subject to New York Law Only)
 - 1995 Credit Support Annex (Transfer - English Law)
 - 1995 Credit Support Deed (Security Interest - English Law)
 - 1995 Credit Support Annex (Security Interest - Japanese Law)
 - 2001 ISDA Margin Provisions
- Parties are free to use other pledge or security agreements

Credit Support Documents

- ◆ Credit Support Annex
- ◆ Guarantees
- ◆ Letters of Credit
- ◆ Surety Bonds
- ◆ Keepwell Agreements
- ◆ Stand-Alone Security Agreements

Notes

Confirmations

- ◆ The Confirmation is written evidence of the terms of a particular transaction
 - It memorializes the parties' oral agreement and allows each party's back office to record and verify the terms of the Transaction
 - It provides the mechanism for satisfying Statute of Frauds

Confirmations (cont.)

- ◆ The Master Agreement provides that the parties are bound from the time they agree the terms of a Transaction - including orally.
- ◆ Dealers spend significant effort preparing and following up to ensure receipt of signed Confirmations
- ◆ The Confirmation will typically incorporate the relevant Definitions
- ◆ The Confirmation may modify the terms of Master Agreement or Credit Support Annex

ISDA Definitions

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| ◆ Interest Rate Definitions <ul style="list-style-type: none">– 2006 Definitions– 2000 Definitions | ◆ Equity Definitions <ul style="list-style-type: none">– 1996 Equity Derivative Definitions– 2002 Equity Derivatives Definitions |
| ◆ FX and Currency Option Definitions <ul style="list-style-type: none">– 1998 Currency and FX Definitions (including Annex A) | ◆ Credit Derivatives <ul style="list-style-type: none">– 2003 Credit Derivatives Definitions |
| ◆ Commodity Definitions <ul style="list-style-type: none">– 1997 Bullion Definitions– 1993 Commodity Derivative Definitions– 2000 Commodity Derivative Supplement | ◆ Bond Option <ul style="list-style-type: none">– 1997 Government Bond Option Definitions |

Notes

Users Guides

- ◆ ISDA has published Users Guides to the following publications:
 - 1992 ISDA Master Agreement
 - 2002 ISDA Master Agreement
 - 1994/1995 ISDA Credit Support Annexes (individual guides for each form)
 - 2001 ISDA Margin Provisions
 - 1998 Foreign Exchange and Currency Options Definitions
 - 2002 Equity Derivatives Definitions

1992 ISDA Master Agreements

- ◆ **Two versions**
 - Local Currency - Single Jurisdiction version
 - Multicurrency - Cross Border version
- ◆ **The principal differences include:**
 - Difference in tax-related provisions (e.g., representations, gross-ups, etc)
 - Local Currency version includes no provisions relating to currency indemnification
 - Local Currency version includes no provisions relating to Multibranch Parties

1992 ISDA Master Agreement: Selected Section Review

Notes

Section 1(b) Inconsistency

- ◆ Schedule trumps Pre-printed Form
- ◆ Confirmations trumps Master Agreement for the purpose of the relevant Transaction.

- ◆ Although this approach provides a great deal of flexibility in crafting the terms of the Master Agreement and individual Transactions, care must be given to avoid unintended consequences.

Section 1(c) Single Agreement

- ◆ "Single Agreement" = key underlying principle of the ISDA Agreement.
 - "Agreement" is defined as Master Agreement and all Confirmations
 - Promotes enforceability of netting in bankruptcy
 - Facilitates netting across Transactions
 - Prevents "cherry picking" among Transactions in insolvency proceedings
 - Default under a single Transaction will constitute an Event of Default under the Master Agreement

Section 2(a) Conditions Precedent

- ◆ A party's payment and delivery obligations are suspended if any of the following occurs:
 - Event of Default with respect to other party
 - Potential Event of Default with respect to other party
 - Early Termination Date with respect to Transaction in question
- ◆ *Note:* Termination Events do not suspend obligations
- ◆ Parallel provision exists in CSA
 - Allows a party to suspend delivery/return of collateral
- ◆ "Potential Event of Default" means an event which with the giving of notice or passage of time would constitute an Event of Default

Notes

Section 2(a)
Conditions Precedent (cont.)

- ◆ Counterparties will often seek to modify 2(a)(iii) to address "TXU risk".
 - *Enron Australia v. TXU Electricity*
 - TXU and Enron Australia executed an ISDA in December 2000.
 - Prior to Enron's bankruptcy in late 2001, the parties entered into various electricity swaps.
 - At the time that Enron entered bankruptcy, TXU would have owed Enron Australia over AUS\$ 3 million on the swaps if they were terminated early.
- ◆ TXU's response: Pursuant to 2(a)(iii), it elected to withhold payments to Enron Australia indefinitely based on occurrence of bankruptcy event and refused to terminate the ISDA.
- ◆ Court decides in favor of TXU: TXU was entitled to suspend payments under 2(a)(iii) and had no obligation to terminate early.

Section 2(c)
Payment Netting

- ◆ Payments due on the same day, in the same currency and in respect of the same Transaction will be netted.
- ◆ Parties may elect to net payments due as above in respect of different Transactions.

Example of Payment Netting
(Section 2(c))

LIBOR = \$100

Party A (Fixed Rate Payer) ← Net: \$25 ← Party B (Floating Rate Payer)

6.50% = \$75

Party B's \$100 payment obligation is reduced to \$25 and Party A's \$75 payment obligation is eliminated because the payment obligations are:

- (i) on the same date;
- (ii) in the same currency; and
- (ii) in respect of the same Transaction.

Notes

Section 2(d)
Deduction or Withholding for Tax

- ◆ The burden of any withholding tax owed by a party under the ISDA Master Agreement is generally allocated to the payer or payee depending on whether the tax is an "Indemnifiable Tax"
 - Payer bears the burden if it is an Indemnifiable Tax; Payee bears the burden if it is not.
- ◆ A withholding tax imposed due to a connection between the payee and the taxing jurisdiction is generally *not* an Indemnifiable Tax, and all other withholding taxes generally *will qualify* as Indemnifiable Taxes.
- ◆ The party bearing the burden of any withholding tax will have the right to terminate so long as the withholding is due to a change in law or taxing authority interpretation.

Section 3
Representations

Standard ISDA Agreement Representations <ul style="list-style-type: none">◆ Basic Representations: Status, Powers, No Violation or Conflict, Consents, Obligations Binding◆ Absence of Certain Events◆ Absence of Litigation◆ Accuracy of Specified Information◆ Payer/Payee Tax Representations
Non-Reliance Representations <ul style="list-style-type: none">◆ Non-Reliance, Assessment and Understanding, Status of Parties
Representations for Specific Counterparties <ul style="list-style-type: none">◆ Hedge Funds: Investment Advisor's Authority◆ Canadian Counterparties: Canadian Securities Acts, Equivalency Clause, Eligible Financial Contract◆ Financial Institutions: FDICIA Representations◆ Transactions with Indian Underliers: Indian Representations

Section 3
Representations (cont.)

- ◆ Representations deemed repeated as of each Trade Date
- ◆ Non-Reliance Representation (added in the Schedule but market standard)
 - Each party has ability to independently evaluate merits and risks of Transaction
 - Neither party acting as advisor or fiduciary to other party
 - Communications between parties are not recommendations or advice

Notes

Section 4 Agreements

- ◆ Furnish Specified Information
 - Tax-related documents, forms and certificates
 - Other documents specified by the parties in Schedule or Confirmations
- ◆ Maintain Authorizations
- ◆ Comply with Laws
- ◆ Agreement to Notify of Inaccuracy of Payee Tax Representation
- ◆ Payment of Stamp Tax

Section 5 Events of Default and Termination Events

- | | |
|----------------------------------------|----------------------------|
| ◆ Events of Default | ◆ Termination Events |
| – Failure to Pay | – Illegality |
| – Breach of Agreement | – Tax Event |
| – Credit Support Default | – Tax Event upon Merger |
| – Misrepresentation | – Credit Event upon Merger |
| – Default under Specified Transactions | |
| – Cross Default | |
| – Bankruptcy | |
| – Merger without Assumption | |

Purpose of Events of Default

- ◆ Deterrence – Threat of close-out should deter a party from committing an Event of Default if it can be avoided, and should encourage cure of any Event of Default that has occurred as soon as possible.
- ◆ Suspension – Allows the Non-defaulting Party to withhold performance thus enabling it to avoid an increase in exposure as a result of making further payments and deliveries.
- ◆ Certainty – Enables the Non-defaulting Party to crystallize its exposure by closing out the Agreement and avoid an increase in exposure due to adverse market movements.
- ◆ Leverage – The threat of close-out strengthens the position of the Non-defaulting Party in restructuring negotiations with the Defaulting Party. Ensures that the Non-defaulting Party's interests are taken into account.

Notes

**Section 5(a)
Events of Default**

- ◆ Events of Default may relate to:
 - A Party
 - A Credit Support Provider of a Party
 - A Specified Entity of a Party

Credit Support Providers

- ◆ Credit Support Providers are identified in Part 4(g) of the Schedule
- ◆ Credit Support Providers typically include, if applicable,
 - guarantors
 - providers of keepwell commitments
 - letters of credit banks
 - sureties

Specified Entities

- ◆ Specified Entities may be identified in the Schedule for purposes of one or more of the following Events of Default or Termination Events:
 - Section 5(a)(v) / Default under Specified Transaction
 - Section 5(a)(vi) / Cross Default
 - Section 5(a)(vii) / Bankruptcy
 - Section 5(b)(iv) / Credit Event Upon Merger
- ◆ The types of entities that may typically be identified as Specified Entities include:
 - certain specifically identified affiliates
 - all "Affiliates" (which is defined under Section 14)
 - certain class of Affiliates (e.g., "Material Affiliates")

Notes

Section 5(a)(i) Failure to Pay

- ◆ Payments or deliveries due under the Agreement
- ◆ Subject to grace period of three business days after notice
 - the requirement that a party provide written notice of such failure to pay/deliver and the existence of three business day cure period may raise issues where a counterparty actively seeks to avoid receipt of notice or where markets are disrupted such that it becomes unclear whether a day is a good business day.
 - There are a number of proposals to shorten the cure period to one business day.

Section 5(a)(ii) Breach of Agreement

- ◆ Failure to perform any obligation under Agreement other than
 - Failure to Pay (covered by 5(a)(i))
 - Notice of Termination Event
 - Certain tax-related obligations under Section 4
- ◆ 30-day cure period following notice
- ◆ No materiality requirement

Section 5(a)(iii) Credit Support Default

- ◆ Failure by a party or its Credit Support Provider to comply with obligations under Credit Support Documents.
 - Grace period under Credit Support Annexes (and other collateral arrangements) is typically one business day following notice of failure to post required credit support.
- ◆ Credit Support Documents are terminated or expire or cease to be in effect without prior written consent.
- ◆ A party or its Credit Support Provider repudiates, disaffirms or disclaims obligations under Credit Support Documents
- ◆ "Credit Support Documents" and "Credit Support Provider" should be identified in Parts 4(f) and (g) of the Schedule.

Notes

Section 5(a)(iv) Misrepresentation

- ◆ Representation made or deemed made by Party or a Credit Support Provider in the ISDA Agreement is incorrect or misleading in any *material* respect
- ◆ Tax Representations not covered
- ◆ No notice or cure period

Section 5(a)(v) Default under Specified Transactions

- ◆ Applies to certain defaults in respect of "Specified Transactions" between a party, its Credit Support Providers or Specified Entities and the other party, its Credit Support Providers or Specified Entities.
- ◆ Defaults by a party in respect of transactions with third parties are not covered by 5(a)(v).
- ◆ There is no minimum threshold or materiality requirement.
- ◆ Defaults Covered:
 - Defaults resulting in Acceleration/Liquidation
 - Payment Defaults (subject to grace period of the relevant Specified Transaction or 3-day implied grace period if there is no stated grace period)
 - Party repudiates, disaffirms or disclaims its obligations under the Specified Transaction

Definition of "Specified Transaction"

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

Notes

**Section 5(a)(viii)
Merger without Assumption**

- ◆ A Party or its Credit Support Provider merges, consolidates or transfers substantially all of its assets and either
 - the surviving entity or transferee fails to assume all the obligations of the Party or Credit Support Provider
 - benefits of Credit Support Documents fail to apply to surviving entity or transferee
- ◆ Compare with Merger-Related Termination Events:
 - Credit Event upon Merger (Section 5 (b) (iv))
 - Tax Event upon Merger (Section 5 (b) (iii))

**Distinction between Events of Default
and Termination Events**

- ◆ Events of Default
 - All outstanding transactions are terminated
 - Valuations determined based on the Non-defaulting Party's "side of the market"
 - Termination payments due immediately
- ◆ Termination Events
 - Terminations may be limited to Affected Transactions
 - Valuations determined based on Non-Affected Party's side of the market or at mid-market
 - Termination payments due two business days after notice

**Distinction between Events of Default
and Termination Events (Cont.)**

- ◆ Differences outside of Agreement
 - Events of Default suggest culpability on part of Defaulting Party.
 - Events of Default may be more likely to trigger cross-default provisions under other agreements since it is characterized as a "default"

Notes

Section 5(b)(iv) Credit Event upon Merger

- ◆ An optional provision that must be elected by the parties in Part 1(d) of Schedule.
- ◆ Applicable to each party, its Credit Support Provider and Specified Entities.
- ◆ Applicable to merger, consolidation or transfer of substantially all of an entity's assets to another party in which the transferee or surviving entity is "materially weaker" than the transferring entity immediately prior to the merger.
 - Some parties use Ratings Downgrade as a standard limitation on the "materially weaker" requirement
- ◆ May be applicable where a party, its Credit Support Provider or a Specified Entity is the surviving entity or acquirer.

Section 5(b)(iii) Tax Event upon Merger

- ◆ Applicable where, as a result of a merger, consolidation or transfer of substantially all of a party's assets, a party to would be required to:
 - pay an additional amount in respect of an Indemnifiable Tax, or
 - receive a payment from which an amount has been deducted or withheld on account of an Indemnifiable Tax.

Section 5(b)(ii) Tax Event

- ◆ Applicable where there is a change in tax law or a taxing authority takes an action and such change or action would require a party to:
 - pay an additional amount in respect of an Indemnifiable Tax, or
 - receive a payment from which an amount has been deducted or withheld on account of an Indemnifiable Tax.

Notes

Section 5(b)(i) Illegality

- ◆ Applicable if it becomes "unlawful" for:
 - Party to make - or receive - payment or delivery,
 - Party to comply with a material provision of Agreement,
 - Credit Support Provider to perform obligations under Credit Support Documents
- ◆ Presumes that party did not fail to maintain authorizations as required under Section 4(b).
- ◆ If an Illegality results in the occurrence of an Event of Default, it will be treated as an Illegality rather than as an Event of Default.

Definition of "Unlawful" (Section 14)

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and "lawful" and "unlawful" will be construed accordingly.

- ◆ The types of laws that often give rise to issues relating to Illegality include:
 - currency control regulations
 - foreign ownership restrictions
 - commodity/futures registration requirements
 - security registration requirements
 - margin restrictions
 - gambling or wagering prohibitions
 - insurance registration requirements
- ◆ Illegality is distinct from "Force Majeure" and "Impossibility" events, neither of which are addressed in the 1992 Master Agreement.

Section 5(b)(v) Additional Termination Events

- ◆ ISDA Master Agreement contemplates that parties may wish to include additional termination events.
- ◆ Additional Termination Events are included in Part 1(h) of the Schedule to the Master Agreement.
 - Need to specify which party is the "Affected Party" for each Additional Termination Event.
- ◆ Common Additional Termination Events include:
 - Ratings Downgrade
 - Decline in Net Asset Value
 - Change in Investment Managers

Notes

Section 6(a)
Right to Terminate

- ◆ Event of Default
 - Non-defaulting Party may designate Early Termination Date for all outstanding Transactions.
- ◆ Termination Event
 - One party (or in some cases either party) may designate Early Termination Date for Affected Transactions.
 - Ability to designate Early Termination may be conditioned upon inability to avoid Termination Event by transfer or some other means. In case of Illegality, Tax Event and Tax Event upon Merger, Affected Party must use commercially reasonable steps to avoid Termination Event by transferring Affected Transactions. If unsuccessful, only the Affected Transactions are subject to termination.

Sections 6(c) and (d)
Mechanics of Early Termination

- ◆ Any notice and/or grace period required to establish existence of Event of Default or Termination Event must have been given or passed.
- ◆ Notice of designating Early Termination Date sent by Non-defaulting Party (or Non-Affected Party).
- ◆ Non-defaulting Party (or Non-Affected Party) calculates amount due in respect of Early Termination.
- ◆ Statement of amount due (including calculation details) sent by calculating party.
- ◆ Payment due on the effective date of statement of amount due (for Termination Event, two Local Business Days following the effective date of statement).

Section 6(e)
Payments on Early Termination

- ◆ In the case of an Event of Default, the value of the terminated Transactions is determined as of the Early Termination Date by the Non-Defaulting Party based on either "Market Quotation" or "Loss" as elected by Parties in Part 1(f) of the Schedule.
- ◆ In the case of a Termination Event, the value of the terminated Transactions may be determined by the Non-Affected Party or by both Parties based on either Market Quotation or Loss.
- ◆ The significance of the party making the determination is that the valuations are calculated based on their "side of the market" (e.g., the price for obtaining a replacement transaction from the perspective of the party making the calculations).
- ◆ Where both Parties make the determination, the value of the Transaction is the average of the two calculations (e.g., a mid-market value).

Notes

Section 7 Transfer

- ◆ Neither the Agreement nor any interest or obligation thereunder may be transferred without prior written consent
- ◆ Restriction applies to granting security interests
- ◆ Restriction does not apply to
 - transfers designed to avoid Termination Events
 - merger of party into another entity
 - transfer of right to receive payment from a defaulting party following termination

Section 10 Offices; Multibranch Parties

- ◆ Optional provision selected by Parties under Part 4(c) of Schedule
- ◆ If applicable, party represents that its obligations for Transactions entered into through branch offices are the same as if the party had entered into the Transaction through its head office.
 - The liability of a party's head office is often a significant consideration of assessing the credit risk and political risk of entering into Transactions with branch offices.
- ◆ Multibranch Parties need to designate which Offices they will make and receive payments under Part 4(d).
 - Certain counterparties will restrict permitted Offices to ones in which they are comfortable with the legal issues associated with the netting of obligations in the branch jurisdiction and the potential ring-fencing of branch obligations.
 - Party may not change its Offices without the prior written consent of the other party.

Section 12 Notices

- ◆ Means of Delivering Notices
 - Written notice in person or by courier
 - Certified or registered mail
 - Telex - answerback required
 - Facsimile - sender bears burden of demonstrating receipt of legible copy by responsible employee*
 - Electronic messaging system*
 - ****Not effective for notices under Sections 5 and 6***
- ◆ Business Day requirement for a notice to be effective

Notes

Section 13(a) Governing Law

- ◆ Master Agreement has been drafted on the basis that it would be governed by either New York or English law. Need to carefully consider selection of other governing laws.
- ◆ Under traditional choice of law doctrine, the election of a governing law could raise issues if the parties do not have significant contacts with the relevant jurisdiction.
- ◆ Section 5-1401 of the New York General Obligation Law provides some level of assurance that the selection of New York law will be protected under New York law.

NY General Obligation Law Section 5-1401

The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars... may agree that the law of [New York] shall govern their rights and duties in whole or in part, whether or not such contact, agreement or undertaking bears a reasonable relation to [New York].

Section 13(b) Jurisdiction

- ◆ Under traditional choice of law doctrine, the submission of a party to the jurisdiction of particular court could raise issues if the parties do not have significant contacts with the relevant jurisdiction.
- ◆ Section 5-1402 of the New York General Obligation Law provides some level of assurance that a submission to the jurisdiction of the New York courts will be protected under New York law.
- ◆ Need to carefully consider submission to jurisdiction if Agreement is governed by law other than New York or English law.
- ◆ Parties also waive right to object based on *forum non conveniens*.

Notes

NY General Obligation Law Section 5-1402

Notwithstanding any act which limits or affects the right of a person to maintain an action or proceeding any person may maintain an action or proceeding against a foreign corporation, non-resident, or foreign state where the action or proceeding arises out of or relates to any contract, agreement or undertaking for which a choice of New York law has been made in whole or in part pursuant to section 5-1401 and which (a) is a contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate, not less than one million dollars, and (b) which contains a provision or provisions whereby such foreign corporation or non-resident agrees to submit to the jurisdiction of the courts of [New York].

2002 ISDA Master Agreement

Market Quotation vs. Loss

- ◆ The perceived weaknesses in the Market Quotation framework were:
 - The difficulty inherent in requesting quotations for a significant number of transactions from at least 4 dealers
 - The difficulty in actually obtaining quotations once requested
 - The types of quotations that were generally provided
 - The divergence of quotations that frequently resulted during times of stress due to market illiquidity
- ◆ The perceived weakness in Loss was too much discretion for the Non-defaulting Party.

Notes

Close-out Amount

- ◆ A single valuation measure which replaces the choice between Market Quotation and Loss
- ◆ Designed to:
 - overcome perceived difficulties associated with precise procedures of Market Quotation in certain market conditions
 - provide more guidance and transparency than Loss
 - take account of development in transaction types

Close-out Amount (cont.)

- ◆ Determining Party determines how much it would cost it (or how much it would be paid) to replace, or provide the economic equivalent of
 - (a) the material terms or the Terminated Transaction(s), including unpaid amounts or deliveries which would have been required after the Early Termination Date and
 - (b) the option rights of the parties in respect of the Terminated Transaction(s).
- ◆ Determining Party must:
 - act in good faith
 - use commercially reasonable procedures
 - in order to obtain a commercially reasonable result

Close-out Amount (cont.)

- ◆ The determining party is *permitted* to base its determination on:
 - Quotations (either firm or indicative) from third parties (not limited to dealers) for replacement transactions
 - Relevant market data (e.g., yield curves, volatilities, spreads and correlations)
 - Internal sources at the determining party relating to the cost of replacement transactions or its estimate of relevant inputs (e.g., yield curves, volatilities, spreads and correlations), but only if the information is the same type as used by it in the regular course of business for the valuation of similar transactions.
- ◆ The determining party is *required* to consider third-party quotations and market data from third parties unless it reasonably believes in good faith that such quotations or market data are not readily available or would produce results that would not satisfy the standards set out in the definition.
