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# ISDA determines Credit Event occurred in Greece

**12 March 2012**

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The EMEA Determinations Committee of the International Swaps and Derivatives Association (ISDA) met on Friday last week (9 March) to discuss the Greek debt swap deal and to determine whether the deal amounts to a “Restructuring Credit Event”, thus triggering settlement under credit default swaps (CDS) referencing the Greek sovereign. The Determinations Committee decided that a “Restructuring Credit Event” has occurred. The decision was based on the invoking by Greece of collective action clauses (“CACs”) to force all holders to accept the exchange offer for existing Greek bonds. The invoking of the clauses means that the “haircut” suffered by bondholders is not voluntary and falls within the definition of “Restructuring” in the 2003 ISDA Credit Derivatives Definitions.

The vast majority of CDS are documented using standard terms developed by ISDA. Since the introduction of new standard terms in 2009, these have provided for regional ISDA Determination Committees to make binding decisions on whether a Credit Event has occurred.

Earlier this year, the EMEA Determinations Committee was asked to decide whether the passage of a law in Greece inserting CACs in bonds issued by Greece and subject to Greek law had constituted a Restructuring Credit Event. The Determinations Committee determined unanimously on 1 March that the passing of the law did not constitute a Credit Event.

Since then, it has been announced that Greece won 85.8% (out of a required 90%) support from its private-sector bondholders for the proposed debt swap. To overcome the shortfall, Greece announced that it is activating CACs in bond contracts to force holdouts into the deal thus bringing the total support to 95.7%, a move which is bound to result in litigation.

Market participants will now conduct an auction through which the recovery value of Greek debt is determined. This will determine the net payouts made under CDS contracts when a credit event occurs. An auction will be held in respect of outstanding Greek sovereign CDS transactions on 19 March.

In credit default swaps subject to physical settlement the protection buyer is required to deliver bonds ("Deliverable Obligations") to the protection seller. A long-standing theoretical issue for the sovereign CDS market has been what bonds can be delivered if the use of CACs means that all of the old bonds have been exchanged for new bonds. Not all bonds issued by Greece are subject to CACs. Also, the relevant ISDA terms set a special definition of Deliverable Obligations for sovereign restructuring and, as a result, at least some new bonds may be Deliverable Obligations. The Determinations Committee will ultimately decide what obligations can be delivered.

We have a dedicated Eurozone response group, with expertise in insolvency, financing, litigation, financial markets and commodities trading, advising clients with assets, positions and other issues connected with the Greek bond swap and the Eurozone economic crisis generally. If you have exposures relevant to the Greek bond swap and/or the Eurozone economic crisis and would like help with the evolving situation, please contact Georgia Quenby, Brett Hillis or Rosanne Kay in London, Anthony Poulopoulos in Athens, or any other member of the Eurozone response group.

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This Client Alert was compiled up to and including March 2012.