

These FAQs are provided for general guidance only and should not be relied upon as advice. Parties acknowledge that ISDA does not provide legal or other advice and expressly disclaims any responsibility for the contents hereof. Each party should undertake a thorough review of the entirety of its documentation (i.e., not limited to the ISDA Master but including, e.g., all Credit Support Documents and Confirmations) with the relevant Lehman entities and obtain such legal or other professional advice as appropriate.

FAQS: Lehman Brothers Filing

1. What is the current situation regarding Lehman Brothers?

Lehman Brothers Holdings Inc. ("LBHI") filed a Voluntary Petition under Chapter 11 of the U.S. Bankruptcy Code on 15 September 2008. We understand that other Lehman entities (including Lehman Brothers International (Europe) which filed for administration in the U.K.), have also made filings. Market participants should keep the status of their specific counterparties under review.

2. Does the filing constitute an Event of Default under the ISDA Master?

The filing of a Chapter 11 Voluntary Petition by LBHI would constitute the institution of a "proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights" by LBHI under Section 5(a)(vii)(4) of the 2002 ISDA Master Agreement or the 1992 ISDA Master Agreement. Note that where LBHI itself has instituted the proceeding, there is no need for the proceeding to result in a judgment or order or for the waiting period of 15 days (in the case of the 2002 ISDA Master) or 30 days (in the case of the 1992 ISDA Master) to expire. Thus, where LBHI is itself the counterparty to the ISDA Master, an Event of Default under Section 5(a)(vii)(4) would have occurred. Where LBHI is not itself the counterparty to the ISDA Master, then an Event of Default under Section 5(a)(vii)(4) would have occurred only if LBHI is named as a Credit Support Provider or a Specified Entity for the purposes of Section 5(a)(vii).

3. Will ISDA publish a Protocol to designate a common Early Termination Date under the ISDA Master where LBHI is the counterparty, a Credit Support Provider or a Specified Entity for the purposes of Section 5(a)(vii)?

No. A Protocol provides a mechanism by which adhering parties may effect multiple bilateral amendments to their existing agreements with other adhering parties. To be effective, LBHI or other relevant Lehman entities would have to adhere to the Protocol in order to effect the amendments to their existing ISDA Masters. This situation is very different from the CDS Auction Protocols, where the adhering parties are the parties to each CDS transaction (but not LBHI itself) referencing for example LBHI as the Reference Entity.