

THE FINANCIAL MARKETS ASSOCIATION OF THE CZECH REPUBLIC (A.C.I.)

Practice Notes to the Financial Markets Association of the Czech Republic (A.C.I.) 2000 Definitions and the Financial Markets Association of the Czech Republic (A.C.I.) 2000 Supplement to the 1992 ISDA Master Agreements

The Financial Markets Association of the Czech Republic (A.C.I.) 2000 Definitions (the „Czech Definitions“) are intended to provide market participants with common set of terms to use in preparing confirmations for privately negotiated derivatives transactions involving the Czech Koruna or any other Czech underlying cash market („Czech Transactions“). The Financial Markets Association of the Czech Republic (A.C.I.) 2000 Supplement to the 1992 ISDA Master Agreements (the „Czech Supplement“), on the other hand, consists of standard amendments that the parties may wish to make to a 1992 ISDA Master Agreement (either Multicurrency-Cross Border or Local Currency-Single Jurisdiction) (an „ISDA Master Agreement“) when at least one party is resident in or organised under the laws of the Czech Republic (a „Czech Master Agreement“).

Set out below are some explanatory comments on different provisions in the Czech Definitions and the Czech Supplement. *Please bear in mind, however, that the precise documentation of each privately negotiated derivatives agreement or transaction remains the responsibility of the parties concerned. Neither the Financial Markets Association of the Czech Republic (A.C.I.) nor ISDA assumes any responsibility for any use to which the Czech Definitions or the Czech Supplement may be put including, without limitation, any use of the Czech Definitions or the Czech Supplement in connection with any privately negotiated derivatives agreement. Each party to an agreement documented under a Czech Master Agreement referring to or incorporating the terms of the Czech Supplement must satisfy itself that the Czech Supplement is appropriate for the agreement, that it has been properly used or adapted in the Schedule or other amendment to the Czech Master Agreement and that the Czech Master Agreement has otherwise been properly drafted, in each case to reflect the commercial intentions of the parties. Each party to a Czech Transaction incorporating the Czech Definitions must satisfy itself that the Czech Definitions are appropriate for the transaction, that they have been properly used or adapted in the confirmation or other document governing the Czech Transaction and that such document has generally been properly drafted, in each case to reflect the commercial intentions of the parties.*

Practice notes to the Czech Definitions

- **ISDA Definitions Booklets.** The Czech Definitions may be used with any ISDA Definitions Booklet. For the avoidance of doubt, appropriate amendments to certain ISDA Definitions Booklets have been made directly in the text of the Czech Definitions (indicated by italics). However, such amendments have not been drafted for every ISDA Definitions Booklet, which may be used with the Czech Definitions. Parties using the Czech Definitions with an ISDA Definitions Booklet other than the 1991 Definitions (whether or not supplemented by the 1998 Supplement), the 1996 Equity Definitions, the 1997 Bond Option Definitions, the 1998 FX Definitions or the 1998 Euro Definitions should consider adding clarifying language to the confirmation or other document governing the Czech Transaction in order to avoid any doubt regarding the precise interaction of the two sets of definitions.

- **Business Day.** The definition of „Business Day,, set out in the Czech Definitions varies depending upon whether, for example, the relevant day is (1) a day on which a payment or delivery is to be made, (2) a day on which a rate, price or value is to be obtained or (3) a day on which notice is to be given or an option is to expire or be exercised. Banks in Czech Republic sometimes settle payments in Czech Koruna on days on which they do not settle foreign exchange transaction. Such a date would occur on any regular business day in Czech Republic that is either a day on which banks are closed in the U.S. or on which the TARGET System is closed. Since the settlement of foreign exchange payments is a component of the definition of „Business Day“ in most of the ISDA Definition Booklets, using a non-amended Definition booklet may lead to confusion in certain circumstances. Accordingly, these Czech Definitions clarify that, except for the narrow purpose of making payments which must, under the terms of the transaction, consist of the purchase or sale of Czech Koruna in exchange for another currency, days when banks in Czech Republic are open for general business will be considered „Business Days“. This Business Day formulation preserves split settlement of payments made under currency swaps in which one party delivers Czech Koruna, allowing payments denominated in Czech Koruna, if any, to settle on days when banks in Czech Republic are open for general business (Praha Banking Days) while reciprocal payments in foreign currencies, if any, settle on days when banks in Czech Republic settle foreign exchange payments (Czech Business Days) (see below).
- **Czech Business Days.** The Czech Definitions allow parties to use the term „Czech Business Day“ in a confirmation to specify, in an abbreviated manner, that certain provisions of the definition of business day will apply. Parties should note, however, that the term is not equivalent to specifying „Praha“ in respect of „Business Days“ in the confirmation or other document governing a Czech Transaction. Pursuant to the Czech Definitions, such a specification means that the definition of „Business Day“ will be interpreted by reference to days on which banks are open for general business in Czech Republic (without reference to foreign exchange markets) and is equivalent to the term „Praha Banking Day“ defined in Section 2.7 of the Czech Definitions. By contrast, the term „Czech Business Days“ has the meaning described in Section 2.1. of the Czech Definitions (and determined in accordance with the other specified sections) which generally corresponds to the default definitions of „Business Day“ normally used in the Praha interbank markets but may entail reference to Business Days in other locations depending upon where the parties are located, the currencies involved and certain other factors.
- **Czech FX Transaction.** The Czech Definitions, by including a definition of a Czech FX Transaction in Section 1.3. of the Czech Definitions, reflect the intention to distinguish for certain purposes FX from non-FX derivatives transactions. This is due, in part, to the mechanics of clearance and settlement of foreign exchange transactions involving the Czech Koruna discussed above. While the distinction between an FX and non-FX transaction is clear in many privately negotiated derivatives transactions, some Czech Transactions may have features of both. In such cases, it may be necessary for parties specifically to consider what treatment is appropriate for such Czech Transaction or for its component part. It is expected that currency swaps would generally not be categorised as FX transactions (and would therefore be subject to the split settlement of payments mentioned above) to the extent that the initial exchange of principal does not entail the purchase or sale of Czech Koruna in exchange for another currency. Parties should note that the technical amendments to the 1998 FX and Currency Option Definitions relating

to the definition of „Business Day“ included in Section 2.6 of the Czech Definitions have been drafted on the assumption that parties will only use to 1998 FX and Currency Option Definitions, as modified by the Czech Definitions, to document Czech transactions which are Czech FX Transactions. Where parties use the Czech Definitions together with the 1998 FX and Currency Option Definitions to document Czech Transactions that are not Czech FX Transactions, they should consider what additional amendments might be required.

- **Czech Modified Following Business Day Convention.** Section 2.11 (a) (iv) of the Czech Definitions describes a Business Day Convention that is sometimes used in Czech Republic in relation to interest rate products. This convention would apply where the parties have specified a numerical date for the first payment, valuation or notice date (or for any other purpose to which it is applicable) and have then provided that subsequent relevant dates will occur monthly, quarterly or at other intervals (as opposed to on individually specified dates) thereafter.
- **Czech Price Sources.** It is anticipated that, in addition to using a Czech Rate Option, Czech FX Settlement Rate Option or Czech Exchange Price Option as defined in the Czech Definitions, parties may specify in the confirmation of a Czech Transaction additional Czech Price Sources by identifying them as Czech Rate Options, Czech FX Settlement Rate Options or Czech Exchange Price Option, as appropriate. Designating a price source as a Czech Price Source in this manner should clarify that its use will, like any Czech Price Source designated as such in the Czech Definitions, trigger the appropriate definition of Business Day under the Czech Definitions.

Practice notes to the Czech Supplement

- **Parties Resident in Czech Republic.** For the purpose of defining a Czech Master Agreement and specifying the applicability of the Czech Supplement, there may be confusion as to whether a particular party is organized or resident in Czech Republic. Branches of non-Czech financial institutions located in Czech Republic are considered to be Czech residents under certain provisions Master Agreement concluded between two non-Czech entities where the Schedule to that ISDA Master Agreement contemplates trading through a Czech branch is unclear. Parties should be aware of this issue in deciding the office through which they should act when entering into individual transactions.
- **Payment Netting.** Under Czech law notice to a counterparty may be required before set-off can be effective in certain circumstances. Although it is unclear whether the Czech Act on Bankruptcy and Resolution also covers payment netting as contemplated in Section 2 (c) of the ISDA Master Agreement, Section 2 of the Czech Supplement intends to confirm the parties intent that notice of payment netting is, in any event, given pursuant to the Czech Master Agreement.
- **Notice of Transfer.** Under Czech law the transfer of an obligation is not valid unless the original beneficiary of the obligation receives notice of the transfer and consents to it. Accordingly, Section 2 of the Czech Supplement contains an amendment providing for notice and consent to the transfer provisions in Section 7 of the Czech Master Agreement.

- **Dispute Resolution – English or New York Law.** Courts in the Republic of Czech Republic are not generally obliged to enforce foreign court judgements. They are, however, generally obliged to enforce international arbitral awards pursuant to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Czech Republic is a signatory. Accordingly, Section 3 of Czech Supplement provides for an arbitral procedure for the resolution of disputes arising out of, or in connection with, a Czech Master Agreement. The amendment allows either party to a Czech Master Agreement to submit any dispute arising under the Czech Master Agreement to arbitration and to make such arbitration the exclusive remedy under the Czech Master Agreement. The amendment provides, however, that if the other party can show that there is a substantial likelihood that the arbitration will not result in an award, which is enforceable in the relevant jurisdiction, the dispute would not go to arbitration. In such a case, or in the event that neither party opts for arbitration, the provision seeks to preserve the position that would have been obtained had Section 13 of the ISDA Master Agreement not been amended. Thus, under a Czech Master Agreement governed by English or New York law, the parties would submit to the jurisdiction of the English or New York courts, as the case may be, but both parties would also have the right to initiate action in courts of other jurisdictions.
- **Dispute Resolution – Czech Law.** Under Czech law disputes relating to certain financial contracts may fall within the mandatory jurisdiction of commercial courts. In order to provide for a standard method of dispute resolution under contracts governed by Czech law involving privately negotiated derivatives transactions, Section 4 of the Czech Supplement provides for arbitration as the preferred method of dispute resolution where the Czech Master Agreement is governed by Czech law.

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