

## Launch of ISDA/IIFM Tahawwut Master Agreement to document Shari'ah compliant hedging transactions

The launch today in Bahrain of the ISDA/IIFM Tahawwut Master Agreement (the "Agreement") by ISDA and IIFM represents a significant milestone in the development of the Islamic derivatives market; one which it is hoped and expected will give an important boost to the growth and liquidity of that market.

Over the past five years, the International Swaps and Derivatives Association ("ISDA"), the International Islamic Financial Market ("IIFM"), the Shari'ah Advisory Panel of IIFM and Clifford Chance LLP as counsel to the project have all made substantial efforts at developing a widely acceptable industry standard agreement.

Taking an approach similar to that of ISDA's 2002 Master Agreement, but adapted for Shari'ah compliance, the Agreement is a framework agreement under which a range of Islamic products (such as *murabahas*<sup>1</sup> and *wa'ads*<sup>2</sup>) can be documented. It is anticipated that the ISDA/IIFM Tahawwut Master Agreement will meet the requirements of market participants across geographical regions, regardless of the market participant's adherence to a particular madhab<sup>3</sup> (*Islamic school of jurisprudence*).

Like ISDA's 2002 Master Agreement, the ISDA/IIFM Tahawwut Master Agreement is a multiproduct agreement, although the intention is that it should be used only with Shari'ah compliant transactions. The ISDA/IIFM Tahawwut Master Agreement has hardwired into it a mechanism that uses two types of confirmations. There are confirmations documenting existing, live transactions (Confirmations) and confirmations documenting transactions that are designated to occur in the future (DFT Terms confirmations). This concept is particularly relevant to transactions such as profit rate swaps.

However, both Confirmations and DFT Terms confirmations fall within the scope of the "single agreement" concept. Consequently, all existing, live transactions and the arrangements relating to designated future transactions will fall within the scope of the representations set out in Section 3, the undertakings set out in Section 4 and all relevant Events of Default and Termination Events set out in Section 5 of the Agreement.

In addition, the flawed asset provision in Section 2(a)(iii) has been preserved within the ISDA/IIFM Tahawwut Master Agreement but its scope has been extended to cover failure to enter into Transactions in accordance with the requirements of DFT Terms Agreements (i.e. non-concluded transactions) as well as failure to perform in respect of Transactions.

1 *Murabaha transactions: It is estimated that approximately 70% of all Islamic transactions in the current market are structured under murabahas, which essentially is a sale and deferred payment product.*

2 *Wa'ad is essentially a unilateral promise.*

3 *Madhab: There are five widely known schools of Islamic jurisprudence. Each geographical area tends to follow a particular Islamic school of jurisprudence e.g. the Shaffi school of jurisprudence is predominant in Malaysia and Indonesia. Although the core tenets, principles and working practices of all Islamic schools of law are substantially the same, there are small differences in the types of transaction which each will sanction; hence the importance attached to developing an agreement widely acceptable among the various schools.*

### Key Issues

Launch of the ISDA/IIFM Tahawwut Master Agreement;

Key differences from the 2002 ISDA Master Agreement; and

Industry workshops and client presentations.

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The key contractual differences between the ISDA/IIFM Tahawwut Master Agreement and the 2002 ISDA Master Agreement include the following:

1. NO COMPENSATION OR INTEREST ON DEFAULTED OR DEFERRED PAYMENTS AND DELIVERIES
2. NO INTEREST PAYABLE
3. ADDITIONAL REPRESENTATIONS AS TO SHARI'AH COMPLIANCE
4. GOVERNING LAW & DISPUTE RESOLUTION
5. EARLY TERMINATION
6. DUAL CLOSE OUT MECHANISM

### **NEXT STEPS**

The ISDA/IIFM Tahawwut Master Agreement is being published today by ISDA and IIFM. We anticipate that ISDA and IIFM will be consulting their respective members and the market on the development of templates for a range of transactions e.g. cross currency swap, profit rate swap, wa'ad based products and Islamic credit support arrangements. Clifford Chance LLP will be participating with ISDA and IIFM in industry workshops commencing on the 10th March 2010 in London ([www.isda.org/conferences](http://www.isda.org/conferences)), and will be arranging its own specific client presentations within the next few weeks, to elaborate on the details of the ISDA/IIFM Tahawwut Master Agreement.

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