

Questions have been raised about the waiver language that relates to the Maiden Lane III special purpose vehicle.

The actual facts that answer those questions are as follows:

1. In an email sent at 2:47 am on Thursday November 6, Davis Polk, outside counsel to the FRBNY, sent for internal review by its client, a form of termination agreement to be entered into between AIG and the various counterparties. The draft did not contain broad releases for either AIG or the counterparties. Rather, it proposed to release each of the parties from further obligations under the CDSs relating to certain multi-sector CDOs.¹

2. After further review and revisions by Davis Polk and FRBNY, the draft termination agreement was sent by FRBNY to AIG and its counsel Weil Gotshal on Thursday November 6 at 4:52 pm. That version continued to have narrowly drafted termination language.²

¹ The relevant language stated: 1. Termination of CDS Transactions. With effect from and including [insert same date as Purchase Date] (the "Termination Date"), and in consideration of the mutual representations, warranties and covenants contained in this Termination Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), AIG-FP and Counterparty are each released and discharged from further obligations to each other with respect to each CDS Transaction and their respective rights against each other thereunder are cancelled, provided that such release and discharge shall not affect any rights, liabilities or obligations of AIG-FP or the Counterparty with respect to payments or other obligations due and payable or due to be performed on or prior to the Termination Date, and all such payments and obligations shall be paid or performed by AIG-FP or Counterparty, as applicable, in accordance with the terms of the CDS Transactions. [Notwithstanding the foregoing, AIG-FP and Counterparty agree that any provision of a Transaction Document that addresses indemnification of AIG-FP or its affiliates by another party or contribution by any such party that by its terms would survive the termination of a CDS Transaction shall survive the termination of the CDS Transactions hereunder].

² 1. Termination of CDS Transactions. With effect from and including [insert same date as Purchase Date] (the "Termination Date"), and in consideration of the mutual representations, warranties and covenants contained in this Termination Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), AIG-FP and Counterparty are each released and discharged from further obligations to each other with respect to each CDS Transaction and their respective rights against each other thereunder, provided that such release and discharge shall not affect any rights, liabilities or obligations of AIG-FP or the Counterparty with respect to payments or other obligations due and payable or due to be performed on or prior to the Termination Date, and all (...continued)

3. After reviewing the FRBNY draft termination agreement, Weil Gotshal conferred with its clients (AIG and AIGFP) about the desirability of expanding the release language in the termination agreement to more broadly cover the release of claims against AIG related to the terminated CDS. This requested change originated from AIG and its counsel, and the FRBNY learned of it subsequently when it received Weil Gotshal's markup.

4. During the evening of November 6, attorneys from Weil Gotshal called attorneys from Davis Polk to advise that they would be sending comments on the termination agreement (and the related agreements), and that they would be broadening the release language. Because releases of this nature are virtually always mutual and given the exigent circumstances facing AIG, the attorneys from the two firms quickly agreed on this call that whatever expansion of the release language that Weil Gotshal and AIG would reflect in their comments would have to be mutual. No FRBNY personnel were on, or consulted in advance of, this brief call, which was the only time this issue was discussed by Davis Polk and Weil Gotshal. There was no other discussion of any kind at any time on this issue between either the FRBNY or its advisors on the one hand, and AIG or its advisors, on the other.

5. Weil Gotshal prepared a markup of the termination agreement that inserted broad and detailed mutual release language, and sent it to Davis Polk by email a few hours later, at 1:27 am on Friday November 7. The new release language tracked almost verbatim language that Weil Gotshal had recently used representing another insurance company that had terminated billions of dollars of similar credit protection only a few months earlier.

6. Davis Polk did not have any comments on the broad release language proposed by Weil Gotshal, and passed the markup of the Termination Agreement on to FRBNY.

(continued...)

such payments and obligations shall be paid or performed by AIG-FP or Counterparty, as applicable, in accordance with the terms of the CDS Transactions nor shall such release and discharge affect the obligation to return Collateral which shall be returned to the Escrow Agent at such date or dates, and subject to netting and set-off, as set forth in this Agreement and the Purchase Agreement. [Notwithstanding the foregoing, AIG-FP and Counterparty agree that any provision of a Transaction Document that addresses indemnification of AIG-FP or its affiliates by another party or contribution by any such party in connection with any CDS Transaction that by its terms would survive the termination of a CDS Transaction shall survive the termination of the CDS Transactions hereunder].

7. Davis Polk spoke to no counterparty about the waiver or releases in the draft termination agreement, and neither Davis Polk nor the FRBNY directed AIG, Weil or any other party to insert a broad waiver. But for AIG's desire for a broader release for itself, the initial narrow FRBNY formulation would have been sent to the counterparties.

8. There is ample precedent for the inclusion of broad release language in these types of termination agreements, which can be found in public filings.³

9. There is absolutely no factual basis for the conclusion, or even an inference, that the FRBNY drafted or created the broad waiver, or intended for the waiver to be for the benefit of any counterparty, or all of the counterparties or that the waiver was done to disadvantage AIG.

³ [Amerinst Insurance Group Ltd.](#)
[Enron Corp.](#)
[RAM Holdings Ltd.](#)