ISDA®

International Swaps and Derivatives Association, Inc.
One Bishops Square
London E1 6AD
United Kingdom
Telephone: 44 (20) 3088 3550
Facsimile: 44 (20) 3088 3555
email: isdaeurope@isda.org
website: www.isda.org

Sir David Tweedie
IASB Chairman
1st Floor
30 Cannon Street
London
EC4M 6XH
United Kingdom

Ms. Leslie Seidman
FASB Acting Chairman
401 Merritt 7
PO Box 5116
Norwalk, CT 06856
USA

15 November 2010

Re: Offsetting of Derivatives Assets and Liabilities – 17 November Joint Board Meeting

Dear Sir David and Ms. Seidman:

The International Swaps and Derivatives Association's (ISDA) Accounting Policy Committee appreciates the opportunity to provide comments and observations to the Financial Accounting Standards Board's ("FASB") and the International Accounting Standards Board ("IASB") on netting for derivatives instruments. ISDA is supportive of the IASB and the FASB's (together 'the Boards') efforts to simplify and enhance the accounting standards for financial instruments, and we look forward to working with the Boards as these efforts develop.

Key messages

- We comment only on netting of derivatives contracts between two entities conducted under a single master agreement.
- In this context, the effect of the master is to create a single contract between the two parties under which all transactions under the Master between the parties can offset each other.

- The two parties may or may not settle net cashflows between ongoing transactions, but this is primarily driven by operational convenience and is entirely unrelated to the enforceability or otherwise of close-out netting.
- As a practical matter, leading dealers report no issues with enforcing close-out netting.
- There have been a number of legal cases relevant to the interpretation of the ISDA master netting agreement, but none of them has challenged the essential principle of net settlement in a jurisdiction where the master was believed to be enforceable.

Each of these issues is discussed below, together with a detailed account of the relevant legal background.

1. Scope of this discussion

In the past, the Boards asked the Boards' Staff to obtain more information on the following:

1) The legal enforceability of the offsetting provisions in ISDA and other similar master netting agreements, especially in different jurisdictions.
2) The legal enforceability of the right of offset when it is included in a contract other than in a master netting arrangement (for example, a bank's right to offset a deposit payable against a loan receivable with the same customer when the customer is in default of the loan).
3) The usefulness of offsetting assets and liabilities in general and in particular the different types of risks (for example, credit risk, liquidity risk, and market risk).
4) The operations of central counter parties (CCP), the extent of protection provided by CCPs for transactions that clear through them and the legal basis of their operations."

The scope of this paper is restricted to the first point of the four points mentioned above. Furthermore, it is limited to those entities with respect to which a relevant opinion exists, as per the FIN 39 conditions for netting. The reasons for this is that our members would not seek to net offsetting balances relating to transactions executed under an ISDA master netting agreement where no relevant opinion exists.

2. Outline of the effect of the ISDA Master Agreement and its practical implications

The legal nature of the ISDA Master Netting Agreement is cohesive: individual transactions conducted under it form a single contract. Thus when a new trade is entered into, it modifies the entire agreement between the parties rather than forming a separate, divisible transaction.

The Agreement provides that same-day, same-currency payments within the same transaction are to be netted (payment netting). It also permits the parties to net same-day, same-currency payments across different transactions although, as a practical matter, such cashflows are often

(but not always) not paid net under the Agreement. This typically reflects the diversity of systems and operational infrastructure within the trading entities and between them. Typically firms move cash using systems which are aligned along a product basis, so for instance an FX settlement would take place using different infrastructure to that used for an interest rate swap. Thus as a practical matter payments are sometimes made gross, but legally there is no difference between the cash flows that occur within a single transaction and those that occur as a result of multiple transactions under the same Master Agreement. Note that this applies both within and across asset classes: where payment netting applies, it applies (if so elected by the parties) to all types of transaction carried out under the Master Agreement. For this reason, the industry is improving the settlement infrastructure to allow a greater use of net payments.

Similarly, currently clearing houses typically only perform payment netting within an asset class rather than between them, but this reflects operational restrictions rather than the legal status of the payments. Here too there is a considerable impetus towards removing these technological barriers.

3. The legal enforceability of the close-out netting provisions under the ISDA Master Agreement

Meaning of "Enforceability"

"Enforceability" in this context comprises two elements: first, enforceability as a matter of contract law under the governing law of the contract (typically English law or New York law); second, consistency with the bankruptcy laws of the jurisdiction where the counterparty is located. The latter is critical since, regardless of the law selected to govern the contract, local insolvency law in an insolvent party's jurisdiction will always override in the event of an insolvency.

ISDA is not aware of any instances in which the close-out netting provisions of the ISDA Master Agreement were found to be unenforceable in jurisdictions in which ISDA has published an opinion confirming such enforceability. This is not surprising, since the ISDA netting opinions are obtained on a very conservative basis, as discussed further below.

Note that 'enforceability' relates to the fact of net payments, not to their amount. Parties may from time to time have commercial disagreements concerning the valuation of derivatives, as they do for other financial instruments, but they are unrelated to the enforceability of netting. Note also that the issue of the enforceability of close-out netting is separate from the issue of the legal capacity of a party to enter into derivatives transactions. We only seek a net treatment for enforceable transactions, as per FIN 39, noting that banks routinely conduct extensive due diligence on enforceability.

Legal Basis for Close-out netting

Close-out netting under the ISDA Master Agreement consists of three principal elements: early termination; valuation of the terminated transactions; and an accounting of those values, together with amounts previously due but unpaid, to arrive at a single net sum owing by one party to the other. Please refer to documents previously provided to the Boards for a detailed discussion of the close-out netting mechanism.

As a contractual matter, outside of bankruptcy, all three of these elements are effective as a matter of both English and New York law (and also under some other laws, though the Agreement is only officially supported for English and New York governing laws). In order for close-out netting to be enforceable against a party incorporated in a particular jurisdiction, however, each of these elements must also stand up in the bankruptcy of that counterparty. The legal analysis in support of this in each jurisdiction differs depending on the laws of that jurisdiction, though certain common elements can be identified.

In many jurisdictions, specific legislation exists that provides for the enforceability in bankruptcy of close-out netting under an ISDA Master Agreement or similar netting agreement, often by way of specific exception from more general prohibitions on the exercise of creditors' rights. This is the case, for example, in the United States. In others, such enforceability is based on established general principles of law. This is the case, for example, in England and those jurisdictions that derive their legal system from England's (though England now also has specific legislation providing for a special resolution regime for banks and building societies under the Banking Act 2009; close-out netting is explicitly protected).

ISDA's Netting Opinions

In order to obtain regulatory capital relief against offsetting derivatives positions ISDA's members that are subject to prudential capital requirements are required to obtain reasoned, written legal opinions that confirm the enforceability of the close-out netting provisions of master netting agreements that they use (the ISDA Master Agreement being by far the most widely used). They must obtain such opinions in respect of all relevant jurisdictions: their home jurisdiction, the jurisdiction of incorporation of their counterparty, each jurisdiction in which the counterparty has a branch though which it trades under the agreement, and the jurisdiction of the governing law of the agreement.

In response to this requirement, ISDA commissions and publishes legal opinions in a standard format as to the enforceability of the close-out netting provisions of the ISDA Master Agreement in relation to a wide range of entity types in various jurisdictions. Currently we publish 55 such opinions, which are updated on an annual cycle. A list of the opinions is available at ISDA's

website (direct link) and is reproduced in Annex A; the opinions themselves are available only to ISDA members, but we would be happy to provide examples to the Boards if that would be helpful.

ISDA's legal opinions cover both pre- and post-insolvency aspects of enforceability, to a "would" level of certainty. In relation to contractual enforceability, they assume that either English law or New York law is selected as the governing law and that the relevant provisions of the ISDA Master Agreement are enforceable as a matter of contract law (i.e. absent bankruptcy), under those laws. The English law and New York law opinions confirm that assumption. In relation to enforceability in bankruptcy, local counsel in each covered jurisdiction provides a review of applicable bankruptcy laws in their jurisdiction and responds to a detailed set of standard questions that address all relevant aspects of bankruptcy laws relevant to the entities covered. It is noteworthy that whilst a normal legal opinion will exclude the effect of bankruptcy, the ISDA opinions specifically include it, since that is their purpose. A copy of the questionnaire that ISDA sends to all counsel, illustrating the comprehensive range of issues that are covered, is attached as Annex B.

ISDA does not commission an opinion unless we know that it will be positive to a "would" level of certainty, however desirable it may be to our members to have an opinion in a particular jurisdiction.

4. ISDA Member Experience

ISDA conducted a short survey among the members of our Accounting Committee, which is made up of the major global banks, to ascertain their experience with closing out ISDA Master Agreements. Despite having conducted a large number of close-outs during the surveyed period, **none** of the respondents reported **any** instances in which the close-out netting provisions of the ISDA Master Agreement were found to be unenforceable in jurisdictions in which ISDA has published an opinion confirming such enforceability.

5. Law Reform Trends and ISDA's role

Market participants recognise that there are differences in legal enforceability of close-out netting between jurisdictions; when transacting, they seek to do so in jurisdictions that provide a high degree of legal certainty. However, the vast majority of derivative transactions are carried out in or between jurisdictions for which an ISDA netting opinion exists.

Jurisdictions that value the development of derivative markets within their borders create a legal environment that promotes market growth. Therefore countries which wish to promote financial markets often revise their legal systems to provide legal certainty for close-out netting.

ISDA's Law reform Activities

Prior to commissioning an opinion in a particular jurisdiction, we work with counsel and members in that jurisdiction to understand the legal issues and, if necessary, to promote changes in the law to provide for the enforceability of close-out netting. This is a core part of ISDA's mission.

As part of this activity, ISDA publishes a Model Netting Act (MNA), together with an explanatory memorandum (both available here). The MNA has been used as the basis for netting legislation in several jurisdictions, including Mauritius, BVI, Pakistan (draft pending) and Seychelles (draft pending). Parts of the MNA can be found in current proposals under discussion in Malaysia. Also, the MNA has to different degrees inspired recent legislation in Slovenia, Hungary (in 2001), UK (Safeguards Order) and Ireland (NAMA bill). The MNA is also the basis for the proposal to Unidroit for a global netting convention.

All of this work is done in order to ensure there is a legal environment in which enforceability is ensured.

Proposed EU Netting Directive

In December 2006 (pursuant to the Commission report on the evaluation of the implementation of the Collateral Directive), the European Commission recognized that it may be desirable to provide a uniform implementation of netting across the EU, especially as resolution regimes are developed in various countries. They decided to implement a separate Directive on Netting, the main goals of which are as follows:

1. To harmonize the scope of the application of close-out netting, i.e., the scope of counterparties that are eligible. This primarily regards corporates, funds, insurance companies and public law entities.
2. To harmonize the material scope of application. Currently netting typically applies to derivatives: this would broaden the scope to include securities lending transactions and repos.
3. To ensure that close out netting remains enforceable in all bankruptcy regimes across the EU as bank and other special resolution regimes are developed.

6. Consistency with Valuation Framework

The enforceability of close-out netting is not simply an issue of the legality of close-out on a counterparty's default, important though that consideration is. It has a significant effect on the valuation of derivative instruments. This is because market participants use a valuation framework which accounts for the return on collateral, and collateral is typically determined on a

net basis. If two counterparties transact more than one instrument together under a Master Netting Agreement, and they agree to pledge collateral, their shared portfolio has a different value depending on whether or not close-out netting is enforceable. The market valuation convention is to assume that netting is enforceable where valid netting opinions exist: netting is therefore consistent with standard practice in valuation in that the industry standard valuation methodology assumes that collateral is provided against the net position.

7. Regulatory and Risk Considerations

It is highly desirable that the statutory accounting framework for financial institutions is consistent with the regulatory framework. It is therefore of note that the Basel II Capital Accord permits the use of net exposure for regulatory purposes where counterparties have a legally enforceable netting agreement, and this definition has been carried forward into the Basel III definition of leverage. This reflects a supervisory understanding that the net exposure represents the best – indeed the only valid – measure of the credit risk between the two parties for transactions conducted under the Master Netting Agreement. Similarly the Basel decision that net exposure represents the best definition of leverage reflects the superiority of this measure as an assessment of leverage risk.

A related consideration is that of risk. While we understand that the balance sheet is not necessarily the most appropriate place for risk information, with footnotes in particular playing an important role, it is important that the balance sheet should not give a wholly inaccurate view of risk. Gross presentation of derivatives does this as it gives an inaccurate view of the credit and liquidity risk[1] positions of the presenter. A net presentation on the balance sheet, with footnotes providing e.g. a maturity profile of exposure, information on concentrations, and other

[1] Note that for secured or collateralized derivatives executed under a master netting arrangement with the same counterparty netting provides the best presentation of liquidity risk. The risk that two offsetting positions, a derivative receivable and a derivative payable with the same counterparty, could result in a surprise liquidity event is remote. For example, if Bank A has a derivative receivable of $100 due in 10 years and a derivative payable of $100 due tomorrow with the same counterparty, the fact that the receivable and payable balances net to zero does not hide liquidity or credit risk. When Bank A makes a payment of $100 to settle the payable tomorrow, the counterparty will be required to immediately (typically, the following day) return $100 to post cash collateral on the net open receivable balance. Thus, there is no net movement of cash simply due to the settlement or maturity of the derivative liability. In this example, we believe the gross movement of cash occurring over the course of one day results in minimal liquidity risk. Importantly, there is not a 10-year mismatch on the timing of cash flows related to the two illustrative derivative trades. Gross balance sheet presentation of the derivative receivable and payable would not capture the nominal inter-day liquidity risk, because Bank A would initially record a derivative payable of $100 and then replace that balance with a $100 payable to return collateral the next day. This example demonstrates that for secured derivatives, daily liquidity risk is driven by the cash collateral requirements which are calculated on a net basis, not a gross basis. During times of market crisis, the relevant measure of risk is the net open amount by counterparty as that balance represents the credit risk in the event of default. In a default event, credit risk and liquidity risk are the same amount for derivatives because any cash required to be settled is calculated on a net basis pursuant to the master netting arrangement.

risk related disclosures, would provide a sound disclosure of the firm's assets and liabilities and their associated risks.

8. Key Legal Cases

We understand that some staff of the Boards have expressed concerns that litigation arising out of the financial crisis, particularly litigation involving the estate of Lehman Brothers, may call into question the enforceability of the close-out netting provisions of the ISDA Master Agreement. This is not the case. It is important to note that the ISDA Master Agreement includes important provisions that parties may use upon a default in addition to the close-out netting provisions. Two provisions in particular are worth mentioning in this context:

- Section 2(a)(iii) allows a Non-defaulting Party to suspend its performance, such as making payments, for so long as an event of default is continuing and termination of the contract has not been elected. This provision is intended to provide a means of alleviating transaction issues between the derivative counterparties (e.g., posting by a counterparty of an incorrect collateral balance or incorrect payment amount) through a means other than Close Out, allowing the parties to remedy the situation while providing the non-defaulting party during this period with a suspension of further payments which could increase the non-defaulting counterparty's credit exposure. Section 2(a)(iii) is fundamentally different from close-out netting, which provides for the calculation and payment of a single net termination amount in the event that termination is elected after default.
- An ISDA Master Agreement also typically contains a set-off provision, which entitles a Non-defaulting Party to set off obligations due from the Defaulting Party under other agreements against the derivative-related single net close-out termination amount owed to the Defaulting Party. It is important to note that set-off is different from close-out netting, and is relevant only *after* the net termination amount is determined.

The recent and ongoing litigation arising from the bankruptcy of various Lehman Brothers entities has **not** impacted the enforceability of the close-out netting provisions of the ISDA Master Agreement. Rather, the cases have involved issues about (i) the operation of the condition precedent provision of Section 2(a)(iii), (ii) cross-affiliate setoff, (iii) the use of certain subordination mechanisms in structured finance transactions and (iv) whether the calculation of amounts due on early termination was appropriate and in accordance with the provisions of the Agreement.

We would be very happy to revert to the Boards further on these issues, or any others, if this would be of use.

ANNEX A
ISDA Legal Opinions by Country

Anguilla	√	Harney Westwood & Riegels
Australia	√	Mallesons Stephen Jaques
Austria	√	Schönherr
Bahamas	√	Higgs & Johnson
Barbados	√	Chancery Chambers
Belgium	√	DLA Piper Rudnick Gray Cary
Bermuda	√	Appleby
Brazil	√	Joint opinion from Pinheiro Neto Advogados & Mattos Filho Veiga Marrey Jr. e Quiroga Advogados
British Virgin Islands	√	Ogier
Canada	√	Stikeman, Elliott
Cayman Islands	√	Maples & Calder
Channel Islands (Guernsey)	√	Ogier
Channel Islands (Jersey)	√	Ogier
Chile	√	CAREY Y CIA. Ltda.
Cyprus	√	Demetriades & Co Law Office
Czech Republic	√	Allen & Overy
Denmark	√	Gorrissen Federspiel Kierkegaard
England	√	Allen & Overy
Finland	√	Hannes Snellman
France	√	Gide Loyrette Nouel
Germany	√	Hengeler Mueller Weitzel Wirtz
Greece	√	Karatzas & Partners
Hong Kong	√	Allen & Overy
Hungary	√	Allen & Overy
Iceland	√	L O G O S Legal Services
India	√	Mr. Atul Setalvad and Juris Corp.

Indonesia	√	Ali Budiardjo, Nugroho, Reksodiputro
Ireland	√	McCann FitzGerald
Israel	√	Meitar Liquornik Geva & Leshem Brandwein, Law Offices
Italy	√	Allen & Overy
Japan	√	Linklaters
Luxembourg	√	Allen & Overy Luxembourg
Malaysia	√	Shearn Delamore & Co.
Malta	√	Ganado & Associates – Advocates
Mauritius	Commissioned	Chambers of Sir Hamid Moollan, Q.C.
Mexico	√	Ritch Heather y Mueller
The Netherlands	√	De Brauw Blackstone Westbroek
Netherlands Antilles	√	Clifford Chance
New Zealand	√	Bell Gully
Norway	√	Wiersholm, Mellbye & Bech
Peru	√	Estudio Echecopar Abogados
Philippines	√	SyCip Salazar Hernandez & Gatmaitan
Poland	√	Allen & Overy
Portugal	√	PLEN – Sociedade de Advogados, RL
Scotland	√	Dundas & Wilson
Singapore	√	Allen & Gledhill
Slovakia	√	Allen & Overy
South Africa	√	Webber Wentzel Bowens
South Korea	√	Kim & Chang
Spain	√	Allen & Overy
Sweden	√	Wistrand
Switzerland	√	Lenz & Staehelin
Taiwan	√	Russin & Vecchi
Thailand	√	Baker & McKenzie
Turkey	√	Pekin & Pekin

United States	✓	Allen & Overy

ANNEX B

THE ISDA MASTER AGREEMENTS

ENFORCEABILITY OF CLOSE-OUT NETTING

REQUEST FOR NEW ADVICE

Dear [INSERT NAME]:

On behalf of the International Swaps and Derivatives Association, Inc. ("ISDA"), I write this letter to request your advice on certain issues with respect to the enforceability of the termination, bilateral close-out netting and multibranch netting provisions of the 1992 and 2002 ISDA Master Agreements.

We would like you to provide a legal opinion to address the enforceability of the termination, bilateral close-out netting and multibranch netting provisions of the 1992 ISDA Master Agreements[2] and the 2002 ISDA Master Agreement (collectively, the "ISDA Master Agreements"). The 1992 ISDA Master Agreements are attached as Annex A and the 2002 ISDA Master Agreement is attached as Annex B. A copy of the 2002 ISDA Master Agreement, marked to show changes from the 1992 ISDA Master Agreement (Multicurrency – Cross Border), is attached as Annex C. We would not, however, expect that the substance of the your opinion on the 2002 ISDA Master Agreement would differ from your opinion relating to the 1992 ISDA Master Agreement.

We ask that you also provide an opinion on the 2001 ISDA Cross-Agreement Bridge (the "2001 Bridge") attached as Annex D. The 2001 Bridge allows the close-out amounts under various industry master agreements to be taken into account in Section 6 of the 1992 ISDA Master Agreements as Unpaid Amounts. Although the 2001 Bridge was not prepared with the 2002 ISDA Master Agreement in mind, we do not expect your opinion to differ with respect to whether the 2001 Bridge is utilized with the 1992 ISDA Master Agreements or the 2002 ISDA Master Agreement. Lastly, we ask that you provide an opinion on the 2002 ISDA Energy Agreement Bridge (the "2002 Bridge"). The 2002 Bridge (attached at Annex E) was modeled on the 2001 Bridge. A blackline copy of the 2002 Bridge, marked to show changes from the 2001 Bridge, is also attached at Annex E. As with the 2001 Bridge, the 2002 Bridge was not prepared with the 2002 ISDA Master Agreement in mind, but we do not expect your opinion to differ with respect to whether the 2002 Bridge is utilized with the 1992 ISDA Master Agreements or the 2002 ISDA Master Agreement.

The 1992 ISDA Master Agreements and the 2002 ISDA Master Agreement – Enforceability of Close-out Netting of the following documents:

1. The 1992 ISDA Master Agreement (Multicurrency – Cross Border) (the "Cross Border Agreement") and the 1992 ISDA Master Agreement (Local Currency - Single Jurisdiction) (the

[2] There are two forms of 1992 ISDA Master Agreement: (i) Multicurrency-Cross Border; and (ii) Single Currency – Local Jurisdiction (see footnote 2).

"Single Jurisdiction Agreement" and, together with the Cross Border Agreement, the "1992 ISDA Master Agreements") published in June 1992 by ISDA.[3]

2. The ISDA 2002 Master Agreement, published in January 2003 by ISDA.

The enforceability of close-out netting is of interest to banks and corporations that have entered into Transactions governed by the 1992 ISDA Master Agreements and/or the 2002 ISDA Master Agreement as a matter of both credit risk assessment and considerations of capital adequacy.

The Basel Committee on Banking Supervision of the Bank for International Settlements published a set of requirements for capital adequacy in the Basel Capital Accord of July 1998 and subsequent amendments and the Basel II Revised Framework of November 2005 (the "Basel Accords"). The Basel Accords require banking supervisors in each of the G-10 countries to recognize various aspects of close-out netting for capital purposes, provided that a bank satisfies certain requirements, including the requirement that a bank obtain the following with respect to a master netting agreement to which that bank is a party:

> "written and reasoned legal opinions that, in the event of a legal challenge, the relevant courts and administrative authorities would find the bank's exposure to be such a net amount under:
>
> - The law of the jurisdiction in which the counterparty is chartered and, if the foreign branch of a counterparty is involved, then also under the law of the jurisdiction in which the branch is located;
> - The law that governs the individual transactions; and
> - The law governs any contract or agreement necessary to effect the netting.
>
> The national supervisor, after consultation when necessary with other relevant supervisors, must be satisfied that the netting is enforceable under the laws of each of the relevant jurisdictions."

In the case of a bank that has entered into transactions under a Cross Border Agreement or a 2002 ISDA Master Agreement as a multibranch party, it is now clearer that, to satisfy this opinion requirement, it is necessary to obtain enforceability opinions from each country where a branch of that bank is located that has entered into one or more transactions under the multibranch ISDA Master Agreement.

---

[3] The Single Jurisdiction Agreement is designed to be used for derivative transactions in a single currency between two parties organized or operating out of the same jurisdiction. The Cross Border Agreement is designed to be used for derivative transactions in any currency between two parties irrespective of their jurisdiction of organization. Both 1992 ISDA Master Agreements may be governed by either New York law or English law as the parties elect. Apart from differences relating to the multicurrency and cross border aspects of the Cross Border Agreement, the two 1992 ISDA Master Agreements are essentially the same in substance. Again, for purposes of the issues presented herein (other than Issue 4 of Part I.B), the relevant provisions of the 1992 ISDA Master Agreements are identical.

Only the Cross Border Agreement of the two 1992 Master Agreements has a multibranch provision. The Single Jurisdiction Agreement does not accommodate multibranch arrangements.[4] Section 10(a) of the Cross Border Agreement provides that:

> "If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organization of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into."

Section 10(a) of the 2002 ISDA Master Agreement has been amended as compared to Section 10(a) of the Cross Border Agreement, as marked in italics below:

> "If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to *and agrees with* the other party that, notwithstanding the place of booking or *its* jurisdiction of incorporation or organization, *its* obligations are the same *in terms of recourse against it* as if it had entered into the Transaction through its head or home office, *except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred.* This representation and agreement will be deemed to be repeated by *each* party on each date on which *the parties enter into* a Transaction."

Opinions about the enforceability of the bilateral close-out netting provisions of the ISDA Master Agreements have been obtained from counsel in a number of jurisdictions. A complete list of the jurisdictions covered can be seen on our website (www.isda.org).

Lastly, please consider that in recent years that transactions documented under the ISDA Master Agreements have expanded to include a broad range of new transactions. Annex F dated November 2008 contains a brief description of the various types of transactions that currently may be documented under the ISDA Master Agreements (the "Transactions").

Accordingly, ISDA would like to ask your firm to prepare the opinion for [INSERT NAME OF JURISDICTION] ("your jurisdiction"). In connection with the preparation of the new netting opinion, we enclose the following:

(1) The 1992 ISDA Master Agreements;

(2) The User's Guide to the 1992 ISDA Master Agreements, 1993 Edition;

(3) The 2002 ISDA Master Agreement;

---

[4] For this reason, all references below in Part I and Part II to the 1992 ISDA Master Agreement are to the Cross Border Agreement.

(4) The User's Guide to the 2002 ISDA Master Agreement, 2003 Edition; and

(5) Copies of legal opinions, amended and restated legal opinions and updated legal opinions from counsel in the United States and in the United Kingdom on the enforceability of the bilateral and multibranch close-out netting provisions of the 1992 ISDA Master Agreements and 2002 ISDA Master Agreement.

I. *Close-out Netting Under the ISDA Master Agreements*

A. Assumptions

1. Two institutions (either two derivatives dealers or a derivatives dealer and a sophisticated end-user of derivatives) have entered into an ISDA Master Agreement. The parties have selected either New York law or English law to govern, at least one of the institutions entering the ISDA Master Agreement is organized in your jurisdiction and neither institution has specified that the provisions of Section 10(a) apply to it.

2. Provisions of the ISDA Master Agreement that you deem crucial to your opinion have not been altered in any material respect (please state, if accurate, that any selections contemplated by Sections 5 and 6 of the ISDA Master Agreement and made pursuant to a Schedule to the ISDA Master Agreement or in a Confirmation of a Transaction would not be considered material alterations)[5].

3. On the basis of the terms and conditions of the ISDA Master Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the ISDA Master Agreement, the parties over time enter into a number of Transactions that are intended to be governed by the ISDA Master Agreement. The transactions entered into include any or all of the Transactions described in Annex F.

4. Some of the Transactions provide for an exchange of cash by both parties and others provide for the physical delivery of shares, bonds or commodities in exchange for cash.

5. After entering into these Transactions and prior to the maturity thereof, one of the parties, which is organized in your jurisdiction, becomes the subject of a voluntary or involuntary case under the insolvency laws of your jurisdiction and, subsequent to the commencement of the insolvency, either that party or an insolvency official seeks to assume the Confirmations representing profitable Transactions for the insolvent party and reject the Confirmations representing unprofitable Transactions for the insolvent party.

[5] This assumption is the result of concerns expressed by certain banking regulators regarding modifications made to standard ISDA Master Agreements.

You should also either assume that the parties have amended the 1992 ISDA Master Agreement so that they have adopted the approach of Full Two Way Payments for all Events of Default as well as Termination Events, or state that the choice between Full Two Way Payments and Limited Two Way Payments (called the First Method in the 1992 ISDA Master Agreement) does not affect your analysis.

Therefore, the enforceability of Limited Two Way Payments should not be analyzed. Moreover, the selection of Market Quotation or Loss as a payment measure under the 1992 ISDA Master Agreement should only be addressed if the selection makes a difference under the laws of your country. Your analysis should be applicable to both banks and corporations organized in your jurisdiction. It should be noted that under the 2002 ISDA Master Agreement, First Method was eliminated, leaving only the Second Method in the 2002 ISDA Master Agreement (although it is not referred to as such).

B. Issues

1. Assuming the parties have not selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organized in your jurisdiction, are the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty enforceable under the law of your jurisdiction?

2. Assuming the parties have selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organized in your jurisdiction, are the provisions of the ISDA Master Agreement automatically terminating all the Transactions upon the insolvency of a counterparty enforceable under the law of your jurisdiction?

3. Are the provisions of the ISDA Master Agreement providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of a counterparty enforceable under the law of your jurisdiction?

4. Assuming the parties have entered into either a 1992 ISDA Master Agreement (Multicurrency-Cross Border) or a 2002 ISDA Master Agreement, one of the parties is insolvent and the parties have selected a Termination Currency other than the currency of the jurisdiction in which the insolvent party is organized, will the payment of the net termination amount in the Termination Currency be enforceable under the law of your jurisdiction?

II. Close-out Netting for Multibranch Parties

A. Assumptions

Please assume the same facts as set forth in Part I above (as applicable) with the following modifications:

1. When addressing Issue 1 set forth in Part II.B below, please assume that a bank organized in your jurisdiction has entered into an ISDA Master Agreement on a multibranch basis. In the ISDA Master Agreement, the local bank has specified that Section 10(a) applies to it. The local bank then has entered into Transactions under ISDA Master Agreements through the bank in your jurisdiction and also through one or more branches located in other countries that had been specified in the Schedules to the bank's ISDA Master Agreements. After entering into these Transactions and prior to the maturity thereof, the local bank becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of your jurisdiction.

2. When addressing Issues 2 and 3 set forth in Part II.B. below, please assume that a bank ("Bank F") organized and with its headquarters in a country ("Country H") other than your jurisdiction has entered into ISDA Master Agreements on a multibranch basis. Bank F has entered into Transactions under ISDA Master Agreements through Bank F and also through one or more branches located in other countries that Bank F had specified in the Schedules to Bank F's ISDA Master Agreements, including in each case a branch of Bank F located in and subject to the laws of your jurisdiction (the "Local Branch"). After entering into these Transactions and prior to the maturity thereof, Bank F becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Country H.

B. <u>Issues</u>

1. Would there be any change in your conclusions concerning the enforceability of close-out netting under the ISDA Master Agreements based upon the fact that the local bank has entered into ISDA Master Agreements on a multibranch basis and then conducted business in that fashion prior to its insolvency?

2. Would there be a separate proceeding in your jurisdiction with respect to the assets and liabilities of the Local Branch at the start of the insolvency proceeding for Bank F in Country H? Or would the relevant authorities in your jurisdiction defer to the proceedings in Country H so that the assets and liabilities of the Local Branch would be handled as part of the proceeding for Bank F in Country H? Could local creditors of the Local Branch initiate a separate proceeding in your jurisdiction even if the relevant authorities in your jurisdiction did not do so?

3. If there would be a separate proceeding in your jurisdiction with respect to the assets and liabilities of the Local Branch, would the receiver or liquidator in your jurisdiction and the courts of your jurisdiction, on the facts above, include Bank F's position under an ISDA Master Agreement, in whole or in part, among the assets of the Local Branch and, if so, would the receiver or liquidator and the courts of your jurisdiction recognize the close-out netting provisions of the ISDA Master Agreements in accordance with their terms? The most significant concern would arise if the receiver, liquidator or court in your jurisdiction considering a single ISDA Master Agreement would require a counterparty of the Local Branch of Bank F to pay the mark-to-market value of Transactions entered into with the Local Branch to the liquidator or receiver of the Local Branch while at the same time forcing the counterparty to claim in the proceedings in Country H for its net value from other Transactions with Bank F under the

same ISDA Master Agreement. In considering this issue, please assume that close-out netting under all the relevant ISDA Master Agreements would be enforced in accordance with its terms in the proceedings for Bank F in Country H.

4. As indicated above thus far ISDA has obtained legal opinions indicating that bilateral and multibranch close-out netting would be enforceable in the following jurisdictions: Anguilla, Australia, Austria, Barbados, the Bahamas, Belgium, Bermuda, Brazil, The British Virgin Islands, Canada, Cayman Islands, Channel Islands (Guernsey and Jersey), The Czech Republic, Denmark, England, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Luxembourg, Malaysia, Malta, Mexico, The Netherlands, Netherlands Antilles, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Scotland, Singapore, Slovakia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey and the United States (multibranch netting enforceable for branches of non-U.S. banks chartered in New York).

However, we would like you to confirm that your answers to Issues 1, 2 and 3 immediately above remain the same, notwithstanding possible actions that could be taken by an insolvency official or court in another jurisdiction where close-out netting may be unenforceable (the "Non-Netting Jurisdiction"). Such actions taken by an insolvency official of a Non-Netting Jurisdiction include the following scenarios:

(1) In the case of an insolvency proceeding for a local bank (a bank organised under the laws of your jurisdiction), the local bank, acting as a multibranch party, has booked Transactions through its home office and one or more branches located in Non-Netting Jurisdictions (the "Non-Netting Branches").

(2) In the case of an insolvency proceeding for a Local Branch of Bank F, Bank F acting as a multibranch party, has booked Transactions through (i) its home office, (ii) its Local Branch and (iii) one or more Non-Netting Branches in other jurisdictions.

ISDA would like you to confirm that where courts in your country have jurisdiction over the assets of a local bank or a Local Branch, a multibranch master agreement such as the ISDA Master Agreement would be treated as a single, unified agreement by a receiver under the laws of your jurisdiction regardless of the treatment of the ISDA Master Agreement or Transactions there under by an insolvency official in a country where close-out netting may be unenforceable.

If you believe that your answer to Issue 3 immediately above will be that the receiver or liquidator in your jurisdiction or the courts of your jurisdiction will not recognize the close-out netting provisions of the ISDA Master Agreements in accordance with their terms, please contact me immediately because there may be additional questions that ISDA would like you to address.

We would ask that you set forth each question in Sections I.B and II.B of this letter in italics in your opinion, followed by your response to that question.

III. Key Differences between the 1992 ISDA Master Agreements and the 2002 ISDA Master Agreement

While a number of amendments were made in the 2002 ISDA Master Agreement, as compared to the 1992 ISDA Master Agreements, some of the key differences are the following: (i) amendments to Sections 5 and 6, including the tightening of grace or cure periods and the addition of new Section 5(b)(ii) – Force Majeure Termination Event; (ii) the introduction of a single measure of damages provision, Close-out Amount, which replaces Market Quotation and Loss in the 1992 ISDA Master Agreements; and (iii) the inclusion of a set-off provisionin Section 6(f) in the 2002 ISDA Master Agreement.

First, Sections 5 and 6 of the 1992 ISDA Master Agreements have been amended in several ways. Grace periods in Sections 5(a)(i), 5(a)(v) and 5(a)(vii)(4) have been reduced in length. Second, Section 5(a)(v) has been amended so that cross-acceleration of a Specified Transaction is not sufficient to trigger an Event of Default; rather, there must be a determination that an acceleration has occurred under the documentation applicable to the relevant Specified Transactions. Thus, "mini close-outs", where fewer than all transactions are terminated, are not sufficient in themselves to constitute an Event of Default.

A third amendment is the addition of a Termination Event set forth in Section 5(b)(ii) as the Force Majeure Termination Event. While some of the changes to the 1992 ISDA Master Agreements effected by the inclusion of a Force Majeure Termination Event relate to Sections 5 and 6, none of the changes relate to the focus of your opinion, namely close-out netting in the event of insolvency. Nevertheless, we ask that you confirm that the inclusion of the Force Majeure Termination Event would not affect your opinion. If the inclusion of such provisions would affect your opinion, please set forth the legal implications. Please note that this is not a request for advice on force majeure and impossibility issues generally under the laws of your jurisdiction, but merely whether the inclusion of a Force Majeure Termination Event would affect your opinion on the enforceability of the termination, close-out netting and multi-branch netting provisions of the 2002 ISDA Master Agreement.

A fourth amendment is the inclusion of a single measure of damages provision, Close-out Amount, in the 2002 ISDA Master Agreement. Market Quotation and Loss in the 1992 ISDA Master Agreements have been eliminated. Please confirm that the inclusion of Close-out Amount will not affect your opinion on the enforceability of the termination, close-out netting and multi-branch netting provisions of the 2002 ISDA Master Agreement.

A fifth amendment is the inclusion of a set-off provision in Section 6(f) of the 2002 ISDA Master Agreement. We are not asking you to opine on the enforceability of Section 6(f), but to confirm that the inclusion of Section 6(f) would not affect your opinion on the enforceability of the close-out netting provisions of the 2002 ISDA Master Agreement.

IV. **Scope of counterparty types covered by the opinion**

Please indicate the scope of coverage of your opinion by reference to the types of counterparty described in Appendix B. Your opinion should, at a minimum, cover counterparties falling within the categories "Bank/Credit Institution", "Corporation" and "Investment Firm/Broker Dealer". If it is possible to include counterparty types falling within additional categories without incurring fees in excess of the amount indicated under "Fees and Deadline" below, please do so.

Appendix B sets out a series of commercial descriptions. We understand that these may not correspond precisely to legal categories under the laws of your jurisdiction. Please indicate, therefore, for each Appendix B category covered by your opinion, the precise legal form for each counterparty type falling within that category that is covered by your opinion. Please include, if relevant, any naming convention or rule that would help a reader of the opinion to identify and classify the entity (for example, the inclusion of a designation in the legal name of the entity such as "S.A.", "N.V.", "A.G.", "S.p.A", "Plc", "Limited" or the like or the mandatory inclusion of a word or words in the name, for example, "Bank" in relation to banks or "Insurance" or "Assurance" in relation to insurance companies).

In relation to each Appendix B category covered by your opinion, if your opinion does not cover all relevant legal forms of counterparty that are capable of falling within that category in your jurisdiction, please indicate clearly what is excluded. For example, if your opinion covers corporations that fall within the category "Investment Firm/Broker Dealer" but not partnerships that fall within that category, then please indicate that fact.

Finally, your opinion may cover one or more category types that do not fall within any of the categories in Appendix B or are otherwise difficult to classify. As above, please indicate the precise legal form and any relevant naming conventions or mandatory naming rules for each additional category covered by your opinion.

An example of an entity difficult to classify would be a German Förderbank (development bank), which is owned by the Sovereign (the Federal Republic of Germany) or by a State of a Federal Sovereign (that is, a Bundesland, such as Nordrhein-Westfalen). Therefore, it would be a Sovereign-Owned Entity. It would also be a Bank/Credit Institution if its core business involves taking deposits and making loans. An entity type that is difficult to classify should be dealt with in your opinion as an additional category.

2001 ISDA Cross-Agreement Bridge
As stated in the introduction, we request your advice on the 2001 Bridge. This advice should be included as a separate heading in your opinion to ISDA regarding the ISDA Master Agreements.

2002 ISDA Energy Agreement Bridge
Finally, we request your advice on the 2002 Bridge. This advice should be included as a separate heading in your opinion to ISDA regarding the ISDA Master Agreements. You will note that the 2002 Bridge is nearly identical in substance to the 2001 Bridge and thus it is anticipated that your advice will generally be the same as set forth for the 2001 Bridge.

Fees and Deadline

If you have any questions in regard to any of the above, please feel free to contact the undersigned by e-mail [INSERT EMAIL ADDRESS] or by telephone [INSERT TEL NUMBER]. ISDA will pay for this work up to a maximum of [INSERT DOLLAR AMOUNT] in aggregate for all fees and expenses. Payment will be made upon completion of the project. We would like a first draft to be completed by **[INSERT DATE]**. Upon completion of the first draft of your opinion, it should be provided to [INSERT

NAME] by e-mail at [INSERT EMAIL ADDRESS]. If you are unable to meet this deadline, please notify me as soon as possible.

Yours faithfully,

[INSERT NAME]

[INSERT TITLE]

Annex A

Annex B

Annex C

Annex D

Annex E

APPENDIX A

NOVEMBER 2009

CERTAIN TRANSACTIONS UNDER THE ISDA MASTER AGREEMENTS

Basis Swap. A transaction in which one party pays periodic amounts of a given currency based on a floating rate and the other party pays periodic amounts of the same currency based on another floating rate, with both rates reset periodically; all calculations are based on a notional amount of the given currency.

Bond Forward. A transaction in which one party agrees to pay an agreed price for a specified amount of a bond of an issuer or a basket of bonds of several issuers at a future date and the other party agrees to pay a price for the same amount of the same bond to be set on a specified date in the future. The payment calculation is based on the amount of the bond and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Bond Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a bond of an issuer, such as Kingdom of Sweden or Unilever N.V., at a specified strike price. The bond option can be settled by physical delivery of the bonds in exchange for the strike price or may be cash settled based on the difference between the market price of the bonds on the exercise date and the strike price.

Bullion Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of Ounces of Bullion at a specified strike price. The option may be settled by physical delivery of Bullion in exchange for the strike price or may be cash settled based on the difference between the market price of Bullion on the exercise date and the strike price.

Bullion Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency calculated by reference to a Bullion reference price (for example, Gold-COMEX on the COMEX Division of the New York Mercantile Exchange) or another method specified by the parties. Bullion swaps include cap, collar or floor transactions in respect of Bullion.

Bullion Trade. A transaction in which one party agrees to buy from or sell to the other party a specified number of Ounces of Bullion at a specified price for settlement either on a “spot” or two-day basis or on a specified future date. A Bullion Trade may be settled by physical delivery of Bullion in exchange for a

specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

For purposes of Bullion Trades, Bullion Options and Bullion Swaps, "Bullion" means gold, silver, platinum or palladium and "Ounce" means, in the case of gold, a fine troy ounce, and in the case of silver, platinum and palladium, a troy ounce (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium).

Buy/Sell-Back Transaction. A transaction in which one party purchases a security (in consideration for a cash payment) and agrees to sell back that security (or in some cases an equivalent security) to the other party (in consideration for the original cash payment plus a premium).

Cap Transaction. A transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified floating rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap) in each case that is reset periodically over a specified per annum rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap).

Collar Transaction. A collar is a combination of a cap and a floor where one party is the floating rate, floating index or floating commodity price payer on the cap and the other party is the floating rate, floating index or floating commodity price payer on the floor.

Commodity Forward. A transaction in which one party agrees to purchase a specified quantity of a commodity at a future date at an agreed price and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. The payment calculation is based on the quantity of the commodity and is settled based, among other things, on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified quantity of a commodity at a specified strike price. The option can be settled either by physically delivering the quantity of the commodity in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay to the buyer the difference between the market price of that quantity of the commodity on the exercise date and the strike price.

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

Contingent Credit Default Swap. A Credit Default Swap Transaction under which the calculation amounts applicable to one or both parties may vary over time by reference to the mark-to-market value of a hypothetical swap transaction.

Credit Default Swap Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to enter into a Credit Default Swap.

Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations ("Deliverable Obligations") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap for which the Reference Obligation is a cash or synthetic asset-backed security. Such a transaction may, but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.

Credit Spread Transaction. A transaction involving either a forward or an option where the value of the transaction is calculated based on the credit spread implicit in the price of the underlying instrument.

Cross Currency Rate Swap. A transaction in which one party pays periodic amounts in one currency based on a specified fixed rate (or a floating rate that is reset periodically) and the other party pays periodic amounts in another currency based on a floating rate that is reset periodically. All calculations are determined on predetermined notional amounts of the two currencies; often such swaps will involve initial and or final exchanges of amounts corresponding to the notional amounts.

Currency Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a given currency at a specified strike price.

Currency Swap. A transaction in which one party pays fixed periodic amounts of one currency and the other party pays fixed periodic amounts of another currency. Payments are calculated on a notional amount. Such swaps may involve initial and or final payments that correspond to the notional amount.

Economic Statistic Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency by reference to interest rates or other factors and the other party pays or may pay an amount or periodic amounts of a currency based on a specified rate or index pertaining to statistical data on economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.

Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may also constitute a swap of emissions allowances or reductions or an option whereby one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which the specified quantity of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.

Equity Forward. A transaction in which one party agrees to pay an agreed price for a specified quantity of shares of an issuer, a basket of shares of several issuers or an equity index at a future date and the other party agrees to pay a price for the same quantity and shares to be set on a specified date in the future. The payment calculation is based on the number of shares and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an equity index either exceeds (in the case of a call) or is less than (in the case of a put) a specified strike price.

Equity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of shares of an issuer or a basket of shares of several issuers at a specified strike price. The share option may be settled by physical delivery of the shares in exchange for the strike price or may be cash settled based on the difference between the market price of the shares on the exercise date and the strike price.

Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed or floating rate and the other party pays periodic amounts of the same currency or a different currency based on the performance of a share of an issuer, a basket of shares of several issuers or an equity index, such as the Standard and Poor's 500 Index.

Floor Transaction. A transaction in which one party pays a single or periodic amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified per annum rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor) over a specified floating rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor).

Foreign Exchange Transaction. A transaction providing for the purchase of one currency with another currency providing for settlement either on a "spot" or two-day basis or a specified future date.

Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.

Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

Fund Option Transaction: A transaction in which one party grants to the other party (for an agreed payment or other consideration) the right, but not the obligation, to receive a payment based on the redemption value of a specified amount of an interest issued to or held by an investor in a fund, pooled investment vehicle or any other interest identified as such in the relevant Confirmation (a "Fund Interest"), whether i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests in relation to a specified strike price. The Fund Option Transactions will generally be cash settled (where settlement occurs based on the excess of such redemption value over such specified strike price (in the case of a call) or the excess of such specified strike price over such redemption value (in the case of a put) as measured on the valuation date or dates relating to the exercise date).

Fund Forward Transaction: A transaction in which one party agrees to pay an agreed price for the redemption value of a specified amount of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests at a future date and the other party agrees to pay a price for the redemption value of the same amount of the same Fund Interests to be set on a specified date in the future. The payment calculation is based on the amount of the redemption value relating to such Fund Interest and generally cash-settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).

Fund Swap Transaction: A transaction a transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency based on the redemption value of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests.

Interest Rate Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an interest rate either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike rate.

Interest Rate Swap. A transaction in which one party pays periodic amounts of a given currency based on a specified fixed rate and the other party pays periodic amounts of the same currency based on a specified floating rate that is reset periodically, such as the London inter-bank offered rate; all calculations are based on a notional amount of the given currency.

Longevity/Mortality Transaction. (a) A transaction employing a derivative instrument, such as a forward, a swap or an option, that is valued according to expected variation in a reference index of observed demographic trends, as exhibited by a specified population, relating to aging, morbidity, and mortality/longevity, or (b) A transaction that references the payment profile underlying a specific portfolio of longevity- or mortality- contingent obligations, e.g. a pool of pension liabilities or life insurance policies (either the actual claims payments or a synthetic basket referencing the profile of claims payments).

Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as oil including oil products, coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates.

Property Index Derivative Transaction. A transaction, often structured in the form of a forward, option or total return swap, between two parties in which the underlying value of the transaction is based on a rate or index based on residential or commercial property prices for a specified local, regional or national area.

Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.

Securities Lending Transaction. A transaction in which one party transfers securities to a party acting as the borrower in exchange for a payment or a series of payments from the borrower and the borrower's obligation to replace the securities at a defined date with identical securities.

Swap Deliverable Contingent Credit Default Swap. A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.

Swap Option. A transaction in which one party grants to the other party the right (in consideration for a premium payment), but not the obligation, to enter into a swap with certain specified terms. In some cases the swap option may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.

Total Return Swap. A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation.

A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.

Weather Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to weather conditions, which may include measurements of heating, cooling, precipitation and wind.

APPENDIX B
SEPTEMBER 2009

CERTAIN COUNTERPARTY TYPES[6]

Bank/Credit Institution. A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking activities, that is, whose core business typically involves (a) taking deposits from private individuals and/or corporate entities and (b) making loans to private individual and/or corporate borrowers. This type of entity is sometimes referred to as a "commercial bank" or, if its business also includes investment banking and trading activities, a "universal bank". (If the entity only conducts investment banking and trading activities, then it falls within the "Investment Firm/Broker Dealer" category below.) This type of entity is referred to as a "credit institution" in European Community (**EC**) legislation. This category may include specialised types of bank, such as a mortgage savings bank (provided that the relevant entity accepts deposits and makes loans), or such an entity may be considered in the local jurisdiction to constitute a separate category of legal entity (as in the case of a building society in the United Kingdom (**UK**)).

Central Bank. A legal entity that performs the function of a central bank for a Sovereign or for an area of monetary union (as in the case of the European Central Bank in respect of the euro zone).

Corporation. A legal entity that is organized as a corporation or company rather than a partnership, is engaged in industrial and/or commercial activities and does not fall within one of the other categories in this Appendix B.

Hedge Fund/Proprietary Trader. A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which is to deal in and/or manage securities and/or other financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.

Insurance Company. A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.

International Organization. An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations established by treaty.

Investment Firm/Broker Dealer. A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the "Hedge Fund/Proprietary Trader" category above.) Its business normally includes holding securities and/or other

[6] In these definitions, the term "legal entity" means an entity with legal personality other than a private individual.

financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a "broker-dealer" in US legislation and as an "investment firm" in EC legislation.

Investment Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a "collective investment scheme" in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds, financial services legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Investment Fund (for example, a trustee of a unit trust) contract on behalf of the Investment Fund, are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.

Local Authority. A legal entity established to administer the functions of local government in a particular region within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.

Partnership. A legal entity or form of arrangement without legal personality that is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Appendix B. If it does not have legal personality, it may nonetheless be treated as though it were a legal person for certain purposes (for example, for insolvency purposes) and not for other purposes (for example, tax or personal liability).

Pension Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a specific class of beneficiaries, normally sponsored by an employer or group of employers. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by pensions legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Pension Fund (for example, a trustee of a pension scheme in the form of a common law trust) contract on behalf of the Pension Fund and are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.

Sovereign. A sovereign nation state recognized internationally as such, typically acting through a direct agency or instrumentality of the central government without separate legal personality, for example, the ministry of finance, treasury or national debt office. This category does not include a State of a Federal Sovereign or other political sub-division of a sovereign nation state if the sub-division has separate legal personality (for example, a Local Authority) and it does not include any legal entity owned by a sovereign nation state (see "Sovereign-owned Entity").

Sovereign Wealth Fund. A legal entity, often created by a special statute and normally wholly owned by a Sovereign, established to manage assets of or on behalf of the Sovereign, which may or may not hold those assets in its own name. Such an entity is often referred to as an "investment authority". For certain Sovereigns, this function is performed by the Central Bank, however for purposes of this Appendix B the term "Sovereign Wealth Fund" excludes a Central Bank.

Sovereign-Owned Entity. A legal entity wholly or majority-owned by a Sovereign, other than a Central Bank, or by a State of a Federal Sovereign, which may or may not benefit from any immunity enjoyed by the Sovereign or State of a Federal Sovereign from legal proceedings or execution against its assets. This category may include entities active entirely in the private sector without any specific public duties or public sector mission as well as statutory bodies with public duties (for example, a statutory body charged with regulatory responsibility over a sector of the domestic economy). This category does not include local governmental authorities (see "Local Authority").

State of a Federal Sovereign. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local Authority.

User's Guides to the Master Agreements (1992 & 2002).

UK and US Legal Opinion – Original and most recent updates.