

published: 6.15.01

VIA EMAIL & FEDERAL EXPRESS

June 15, 2001

Mr. Thomas A. Russo, Co-Chairman
Ms. Jane Carlin, Co-Chairman
The Global Documentation Steering Committee
c/o Felicity Fridman
Lehman Brothers Inc.
200 Vesey Street
10th Floor
New York, NY 10285

Dear Mr. Russo & Ms. Carlin:

The Bond Market Association ("Association")¹ welcomes this opportunity to comment on your draft recommendation relating to involuntary insolvency released for public comment by the Global Documentation Steering Committee ("GDSC") in a recent letter (the "June Letter"). In the June Letter, comments were solicited regarding two recommendations previously issued by the GDSC. These draft recommendations proposed the adoption, in standard agreements commonly used to document transactions in the over-the-counter markets, of (i) a new definition of involuntary insolvency and a shortened cure period for a party following the filing of an involuntary insolvency petition; and (ii) a cross-default provision. The June Letter also asked for comments on two additional draft recommendations that called for broad adoption of a model adequate assurances clause and a model force majeure clause.

This letter explains the Association's position regarding the GDSC's draft proposal relating to involuntary insolvency.² The Association will submit at a later date one or more additional comment letters addressing the GDSC's other recommendations.

As you know, in December of last year, and again in the June Letter, the GDSC recommended that industry standard documentation include a definition of an involuntary insolvency event that, among other things, provides that such an event occurs following the filing of an involuntary insolvency petition by a non-governmental party, unless such petition is of such filing (the "Involuntary Insolvency Proposal" or "Proposal"). The Involuntary Insolvency Proposal also provides that no such grace period will be available where the petition is filed by a governmental body.

Following the original release of the Involuntary Insolvency Proposal last year, the Association reviewed the Proposal and preliminarily concluded that it should implement this particular recommendation. Our intention at that time was to issue (consistent with long-standing Association practices in the documentation area) an exposure draft to our members containing the new model language. This exposure draft would have

recommended the GDSC's Involuntary Insolvency Proposal for use by our members in connection with the various standardized master agreements that we sponsor.³

It has since come to our attention that the International Swaps & Derivatives Association ("ISDA") has apparently declined to adopt the GDSC's Involuntary Insolvency Proposal. Among other things, we understand that ISDA instead intends to issue a protocol (the "Protocol") that is in line with the 15-day cure period for an involuntary insolvency event already specified in most of the Association Sponsored Agreements.⁴

It is our understanding that one of the principal objectives of the GDSC's efforts is to seek documentation harmonization, and to implement certain recommendations made by the Counterparty Risk Management Policy Group.⁵ In light of ISDA's decision, the Association believes it would run counter to the GDSC's goals for us to recommend *at this time* modifications to the current cure period for involuntary insolvency from fifteen (15) days to five (5) days. The Association believes that achieving documentation harmonization and reducing documentation basis risk are ultimately more important *in this particular instance* than any rationale justifying the use of any particular cure period. Accordingly, we do not currently intend to recommend to market participants the Proposal to reduce the cure period in Association Sponsored Agreements, with the possible exception of the GMRA, that relates to the filing of an involuntary insolvency petition. The Association, in all other respects, intends to recommend the language of the GDSC's Involuntary Insolvency Proposal for use in Association Sponsored Agreements (other than the CPMA).

We continue nevertheless to stand ready to recommend to our members the adoption of a five-day (or shorter) cure period if and when a firm consensus on this emerges among the members of the relevant trade associations and other market participants.

The Association believes that harmonization of the definition of insolvency is a very important first step in reducing documentation basis risk, and finds the GDSC's recommended definition to be clear and well drafted. In particular, the Association believes that the elimination of a grace period where a proceeding has been commenced by a governmental body will strengthen the protections afforded the non-defaulting party currently employed in the Association Sponsored Agreements.

In closing, the Association greatly appreciates the important work being done by the GDSC and its efforts to promote harmonization of contractual terms found in standard industry-sponsored legal documentation. We look forward to submitting additional comment letters on the other draft proposals contained in GDSC's June Letter. Meanwhile, if you have questions about this letter, please feel free to contact Association Vice President and Assistant General Counsel Eric L. Foster at 212.440.9448.

Sincerely,

/s/

Joseph P. Blauvelt
Chairman
Global Documentation Advisory Committee

cc: *The Bond Market Association*
Global Documentation Advisory Committee
Funding Division Legal Advisory Committee
Government Legal Advisory Committee
MBS/ABS Legal Advisory Committee
Paul Saltzman, Executive Vice President and General Counsel

International Swaps & Derivatives Association
Robert Pickel, Executive Director and Chief Executive Officer

International Securities Market Association
Thomas Hunziker, General Counsel

British Bankers' Association
Simon Hills, Director

Emerging Markets Traders Association
Aviva Werner, Senior Legal Counsel

The Foreign Exchange Committee
Joyce Hansen, The Federal Reserve Bank of New York

International Primary Market Association
Clifford Dammers, General Secretary

London Investment Banking Association
Sir Adam Ridley, Director General

Japan Securities Dealers Association
Mr. Takaaki Okada, International Liason

Investment Dealers Association of Canada
Mr. Ian Russell, Vice President

Appendix A

The Bond Market Association Sponsored Agreements

1. Master Repurchase Agreement - 1996 version
2. Global Master Repurchase Agreement - 2000 version*

3. Master Securities Lending Agreement - 2000 version**
4. Master OTC Options Agreement - 2000 version
5. Master Securities Forward Transaction Agreement -1996 version
6. Cross Product Master Agreement - 2000 version***

* The Bond Market Association co-sponsored this agreement with the International Securities Market Association ("ISMA"). Given that the Association and ISMA have a long-standing understanding that changes to the GMRA will only be made by mutual agreement, the Association plans to seek ISMA's support for the change specified in the GDSC's Involuntary Insolvency Proposal, with the exception of the proposed 5-day cure period.

** The Bond Market Association co-sponsored this agreement with the Securities Industry Association ("SIA").

*** The Bond Market Association co-sponsored this agreement with the following other international trade associations: the British Bankers' Association ("BBA"), the Emerging Markets Traders Association ("EMTA"), the Foreign Exchange Committee ("FEC"), the International Primary Market Association ("IPMA"), the International Swaps and Derivatives Association ("ISDA"), the Japan Securities Dealers Association ("JSDA"), the London Investment Banking Association ("LIBA") and the Investment Dealers Association of Canada ("IDA").

Notes

1. The Bond Market Association ("Association") represents securities firms and banks that underwrite, distribute and trade in fixed income securities, both domestically and internationally, including all primary dealers recognized by the Federal Reserve Bank of New York. Our members are also actively involved in the funding markets for such securities, including the repurchase and securities lending markets. Further information regarding the Association, its members, and activities, can be obtained from our public website (www.bondmarkets.com).
2. This letter was prepared in consultation with the Association's Global Documentation Advisory Committee ("GDAC"). The GDAC has been charged by the Association's Board of Directors with reviewing the various recommendations released for public comment by the GDSC.
3. Attached as appendix A is a list of the various master agreements that we publish either individually or jointly with other trade associations. ("Association Sponsored Agreements"). The Cross-Product Master Agreement ("CPMA") does not include involuntary insolvency as an event of default. Instead, it relies on the events of default in the various underlying agreements to trigger a closeout event. As a result, the GDSC's Involuntary Insolvency Proposal is not applicable to the CPMA.

4. However, the Association's Global Master Repurchase Agreement ("GMRA") currently has a 30-day cure period for involuntary insolvency. The GMRA is co-sponsored by the Association and the International Securities Market Association ("ISMA"). The Association is in the process of convening a meeting of the GMRA 2000 Working Group to discuss the Involuntary Insolvency Proposal. The Association intends to recommend to the GMRA 2000 Working Group that it adopt the Proposal, with a 15-day cure period.
5. See *Improving Counterparty Risk Management Practices* pgs. 47-48 published by The Counterparty Risk Management Policy Group (June 1999).