TO: Attendees at the Industry Symposium Regarding the New Cross-Product Master Agreement

FROM: Paul Saltzman, Executive Vice President and General Counsel
Wendy Fried, Vice President and Associate General Counsel

DATE: February 16, 2000

RE: Legal Opinions

The Bond Market Association ("TBMA") has obtained legal opinions in relation to the Cross-Product Master Agreement ("CPMA"). The [CPMA](http://www.sifma.org/services/stdforms/CrossProductMaster.html)  is an "umbrella" agreement that provides, among other things, for the netting of close-out amounts determined in accordance with underlying master agreements ("Principal Agreements") and also amends those Principal Agreements in certain limited respects.

New York and English law opinions regarding the enforceability of the CPMA provided by Clifford Chance and a memorandum from Cleary, Gottlieb, Steen & Hamilton regarding the CPMA's effect on Principal Agreements sponsored by TBMA have been addressed to TBMA and provided solely for the use of TBMA and its members. The opinions and the memorandum are available to TBMA members on TBMA's website at www.sifma.org in the "[standard agreements](http://www.sifma.org/services/stdforms/CrossProductMaster.html)" section. For hard copies of the signed Clifford Chance opinions, TBMA members may contact Nancy Jacklin in New York at 212-709-4333 (Nancy.Jacklin@CliffordChance.com) or Habib Motani in London at 44-171-600-1000 (Habib.Motani@CliffordChance.com).

For the benefit of attendees at the Industry Symposium, we have described below the material aspects of the opinions and memorandum. **NO ONE SHOULD RELY ON THIS MEMORANDUM AS PROVIDING A DEFINITIVE SUMMARY OF THE OPINIONS/MEMORANDUM. MARKET PARTICIPANTS SHOULD READ THE ACTUAL OPINIONS/MEMORANDUM AND CONSULT WITH COUNSEL.**

#### 1. Enforceability of the CPMA

TBMA has obtained enforceability and netting opinions from New York and English counsel on the CPMA. Clifford Chance Rogers & Wells LLP has provided two opinions. [One](http://archives1.sifma.org/mark_sec/cpma2_us_opinion.pdf) addresses the enforceability of the CPMA (including Parts I - VI and Part VII.3 of the Schedule hereto) if the agreement is governed by New York law. The opinion that the CPMA is enforceable under New York law contains the assumptions and qualifications customary to such opinions, including "bankruptcy" and "equitable remedies" exceptions. The [second opinion](http://archives1.sifma.org/mark_sec/cpma2_us_memorandum.pdf), issued in respect of New York and Federal law, addresses the enforceability of the termination and netting provisions of the CPMA in the event of the insolvency of a party that is a "financial institution" as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), and where the other prerequisites for the application of FDICIA's protections for netting contracts are met. The opinion that the termination and netting provisions are enforceable in these circumstances includes assumptions and qualifications customary in legal opinions of this type.

Clifford Chance Limited Liability Partnership similarly has provided two opinions under English law. [One](http://archives1.sifma.org/mark_sec/uk_enforceability_opinion.pdf) addresses the enforceability of the CPMA (including Parts I-VI and Part VII.3 of the Schedule thereto) if it is governed by English law. The opinion that the CPMA is enforceable under English law contains customary assumptions and qualifications, including "bankruptcy" and "equitable remedies" exceptions. The [second opinion](http://archives1.sifma.org/mark_sec/uk_do_not_harm_opinion.pdf) addresses the enforceability of the termination and netting provisions of the CPMA in the event a party becomes subject to insolvency proceedings under the laws of England and Wales. This opinion that the termination and netting provisions are enforceable in such circumstances also contains assumptions and qualifications customary for such "netting" opinions.

It is likely that market participants will wish to obtain enforceability or netting opinions in respect of the CPMA from additional jurisdictions, if a law other than English or New York law is chosen to govern the contract, or where counterparties are subject to insolvency regimes other than those of the United States or England and Wales.

#### 2. Enforceability of Master Agreements Amended by the CPMA

In order to begin the process of confirming that the CPMA amendments to Principal Agreements will not adversely impact the enforceability of such Principal Agreements, TBMA has obtained a [legal memorandum](http://archives1.sifma.org/mark_sec/clearymemo.pdf) from Cleary, Gottlieb, Steen & Hamilton (the "Cleary Gottlieb Memorandum"). Because legislative changes to the Bankruptcy Code and the banking laws are pending, we are not yet seeking enforceability opinions relating to Principal Agreements sponsored by TBMA. As soon as these legislative changes are (we hope) adopted, we anticipate receiving opinions from Cleary Gottlieb as to the enforceability of those Principal Agreements sponsored by TBMA.

The Cleary Gottlieb Memorandum addresses whether entry into the CPMA or the provision of a Section 2 Notice under the CPMA would, in U.S. insolvency proceedings in respect of a Closed-Out Party, adversely affect the enforceability of the termination, netting and foreclosure provisions of any of the Principal Agreements sponsored by TBMA (a "TBMA Principal Agreement") or adversely affect protections given to the Closing-Out Party against the avoidance of transfers made under a TBMA Principal Agreement as fraudulent or preferential transfers. The Memorandum addresses only bankruptcy proceedings under Chapters 7 and 11 of the federal Bankruptcy Code (the "Code"), proceedings under the Federal Deposit Insurance Act ("FDIA") in respect of institutions organized under the laws of the United States or a State thereof, and proceedings under the Securities Investor Protection Act of 1970 ("SIPA").

The Memorandum focuses on the protections provided to certain contracts and parties under provisions of the Code and FDIA and letters issued by SIPC's general counsel. These protections depend on the classification of the parties and the transactions involved. Since the CPMA would not alter these classifications, the Cleary Gottlieb Memorandum concludes (subject to the analysis and qualifications contained therein), that neither entry into the CPMA covering a TBMA Principal Agreement nor the provision of a Section 2 Notice under the CPMA would adversely affect the Closing-Out Party's rights under these provisions of the Code and the FDIA or the SIPC letters.

It is expected that market participants will be seeking additional opinions through relevant trade associations, or directly, on the impact on the enforceability of the netting provisions of various standard form master agreements in the event they are designated as Principal Agreements under the CPMA.

cc: Seth Grosshandler, *Cleary, Gottlieb, Steen & Hamilton*
Nancy Jacklin, *Clifford Chance Rogers & Wells LLP*
Habib Motani, *Clifford Chance Limited Liability Partnership*