



CROSS-PRODUCT MASTER AGREEMENT GUIDANCE NOTES

February 2000

The Bond Market Association (TBMA), the British Bankers' Association (BBA), the Emerging Markets Traders Association (EMTA), the Foreign Exchange Committee, 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) (collectively referred to as the "**Publishing Associations**") consider that managing counterparty risk across different financial product types and widely used industry master agreements is a goal that should be pursued to reduce financial system risk. The Cross-Product Master Agreement (the "**Agreement**") provides one tool that may be useful towards achieving this goal. The Publishing Associations are recommending that market participants take note of this initiative and consider using the Agreement where appropriate, keeping in mind that the requirements for netting may differ from jurisdiction to jurisdiction.

To assist users of the Agreement, the following Guidance Notes (including the examples and exhibits set out below) are provided. The Guidance Notes are important to a more complete understanding of the purpose and operation of the Agreement and the Schedule attached thereto, and reflect extensive discussions by market participants. **These Guidance Notes should not be relied upon by any party to determine, without appropriate legal, accounting, tax, regulatory and other relevant professional advice, whether the Agreement is suitable to its particular circumstances and needs with respect to particular counterparties. Defined terms not otherwise defined in these Guidance Notes are used as defined in the Agreement.**

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A. IMPORTANCE OF THE INITIATIVE

For over a decade market participants have developed, often through industry trade associations, standardized or customized agreements ("**master agreements**") to document financial transactions entered into in particular markets or with respect to particular products. These include securities repurchase and lending transactions; foreign currency spot, forward, futures and options transactions; interest rate and currency swaps; equity, commodity, credit default and other swap and option transactions; and other financial transactions. Industry trade association standard form agreements that have met with increasing acceptance over this period include: the PSA/ISMA Global Master Repurchase Agreement (English law), the TBMA Master Repurchase Agreement (New York law), the ISDA Master Agreements, the International Foreign Exchange Master Agreement, the Overseas Securities Lending Agreement, the EMTA Master Agreement for Options on Emerging Markets Instruments and many others.

The master agreements share several important elements:

- Each master agreement documents transactions that may be agreed orally between the parties and that are often subject to brief written or electronic confirmations of their financial terms, with the master agreement supplementing the economic terms of each trade.
- A series of transactions between two parties are encompassed in a single master agreement, with the master agreement providing common events of default or other termination events and giving a party specified rights in those circumstances.
- These rights include, where appropriate, rights to: suspend further performance; terminate transactions covered by the master agreement; value each party's positions; calculate these amounts in terms of a single base currency; liquidate any margin or collateral in support thereof; and set off each such amount against the other so as to determine a single net amount owed by one party to the other (a "**Settlement Amount**").

Master agreements thus serve as an important means of providing legal certainty, reducing risks and enhancing liquidity in global financial markets. The importance of such master agreements to risk management has consistently been recognized by national and international regulatory authorities. In their June 1999 report on "Improving Counterparty Risk Management Practices", the Counterparty Risk Management Policy Group (of twelve major, internationally active commercial and investment banks) ("**CRMPG**") made a number of recommendations for improved documentation practices. The CRMPG stated: "Parties should make the best possible use of multi-product master agreements, and master-masters, to facilitate obligation netting and collateral netting across product lines." In addition, the CRMPG noted the risks arising from discrepancies in events of default and differing notice periods for close-outs in different industry master agreements. Specifically, the CRMPG cited the industry's development of a standardized cross-product master agreement as a way to reduce these risks through the availability of a cross-default and pre-emption of certain notice periods in the event of a default under the covered master agreements. The CRMPG stated that it expressly supported the industry's efforts and encouraged as many trade associations as possible to support these efforts and the Agreement.

The Agreement is designed to build upon and not to disturb the important foundation of product-focused master agreements. The Agreement acts as a contractual superstructure encompassing any number of bilateral master agreements (the "**Principal Agreements**") which have been or may in the future be entered into by the parties thereto. The Agreement, in specified circumstances, *permits* a party which has the *right* to accelerate, close out, liquidate, cancel or terminate all transactions under one Principal Agreement (*i.e.*, "**Close Out**") to Close Out all transactions under all other Principal Agreements listed in a Schedule to the Agreement. The calculation and determination of the Settlement Amount owed under each Principal Agreement is not modified by the Agreement and would proceed according to each

Principal Agreement's contractual terms, including leaving undisturbed the rights of a party to apply any margin, collateral or other credit support to any amounts otherwise owing under each Principal Agreement. However, if the party who has a right to Close Out a particular Principal Agreement *elects* to trigger the provisions of the Agreement (thereby effectuating the cross-default and set-off provisions), then, when multiple and off-setting obligations are so determined, each Settlement Amount would not be paid as otherwise required by each Principal Agreement. Instead, the settlement of Settlement Amounts otherwise due would be deferred and those Settlement Amounts subsequently would be set off in a continuing process described in step 3 below, ultimately to reach a single net amount (the "**Final Net Settlement Amount**") due from one party to the other under the Principal Agreements.

B. THE BUILDING BLOCKS (PRINCIPAL AGREEMENTS AND UNCOVERED TRANSACTIONS) (SECTION 1.1 AND PART VII.2 OF THE SCHEDULE)

The Agreement provides a contractual superstructure under which the parties to the Agreement designate at the time of its execution those underlying master agreements or other financial transactions they wish to include in the foundation. "Principal Agreements" (as defined in Section 1.1) is the term used to describe those master agreements designated in Part I of the Schedule. Part I of the Schedule lists commonly used standard form master agreements so that parties may check the relevant boxes for those agreements to be covered by the Agreement and insert the applicable effective dates thereof. The list in the Schedule is illustrative and not exclusive and parties may obviously include additional agreements in Part I, to the extent not otherwise identified in the Schedule. Parties should consider carefully which agreements are included and the potential implications of a Close-Out.¹

For the convenience of market participants, attached as Exhibit 1 hereto is a short form of letter agreement that parties to an executed Agreement can utilize each time they subsequently enter into a new master agreement that they wish to include as an additional Principal Agreement. Alternatively, parties may check the box for item number 15 which would cover, as a Principal Agreement, "any master agreement between the parties covering securities contracts, forward contracts, commodity contracts, spot or forward currency contracts, repurchase agreements, swap agreements or any other financial transactions whether currently in existence or arising hereafter". Long-form confirmations that incorporate the terms of a master agreement may be designated as a Principal Agreement under item number 16 in Part I of the Schedule.

Many market participants view the Agreement as an opportunity to obtain, at the same time, agreement from certain counterparties to include within the scope of the Agreement transactions between them which are not otherwise subject to a master agreement ("**Uncovered Transactions**"). These transactions may be agreed to orally and may or may not be subject to written or electronic confirmations. To include Uncovered Transactions under the Agreement in the manner described below, parties should choose the optional provision in Part VII.2 of the Schedule.

¹ For example, there may be liquidity implications where the International Deposit Netting Agreement (IDNA) is included as a Principal Agreement and transactions covered by the Agreement represent a major source of funding for a party. For this reason, the IDNA has not been included in Part I.

C. THE OPERATION OF THE CONTRACTUAL SUPERSTRUCTURE

As described below, there are three basic operational steps in the Agreement: first, the occurrence of a close-out event ("**Close-Out Event**") under one Principal Agreement *permits* the Close-Out of all (but not fewer than all) Principal Agreements and such Close-Out is effectuated upon the giving of a notice (a "**Close-Out Notice**"); second, Settlement Amounts are determined according to the terms of each Closed-Out Agreement; and third, those Settlement Amounts are themselves set off to obtain a single Final Net Settlement Amount due. As used herein, the term "**Closed-Out Agreement**" means a Principal Agreement under which all transactions have been Closed Out which may legally be Closed Out under applicable law.

STEP 1: THE MECHANISM FOR CLOSE-OUT (SECTION 2)

(a) Right to Close Out Transactions Under All Principal Agreements

Under the Agreement, an event that would otherwise result in the Close-Out of a Principal Agreement becomes a contractual basis for the party entitled to Close Out that Principal Agreement to Close Out all (but not fewer than all) other Principal Agreements that, in that party's good faith judgment, may legally be Closed Out. In addition, a party's breach of a representation, warranty or covenant under the Agreement itself will entitle the other party to Close Out all (but not fewer than all) Principal Agreements that may be legally Closed Out. The party with the right to Close Out all Principal Agreements (the "**Closing-Out Party**") provides a Close-Out Notice to its counterparty that all Principal Agreements have been Closed Out (listing as a courtesy those Principal Agreements otherwise Closed Out by their own terms). A suggested form of notice is provided as Exhibit 2 attached hereto. In this regard, the Agreement amends the Principal Agreements to:

- (i) specify events that constitute additional bases for Close-Out of all Principal Agreements, and
- (ii) effectively override any notice, cure period or other provision that would have otherwise, in those circumstances, postponed an immediate termination or acceleration of the transactions under the Principal Agreements.

Any Principal Agreements automatically terminated because, for example, an insolvency event has occurred should be listed in the Close-Out Notice as a Principal Agreement under which the transactions have been automatically Closed Out, yet which is nonetheless subject to the settlement provisions of the Agreement.

(b) Right to Close Out Transactions Under All Principal Agreements and Uncovered Transactions

As described above, if parties choose to include the optional provision in Part VII.2 of the Schedule, the Agreement will include Uncovered Transactions within its scope. A breach under an Uncovered Transaction, a Close-Out Event under a Principal Agreement, or a breach of a party's representation, warranty or covenant under the Agreement will give the Closing-Out Party the right under Section 2.1 of the Agreement to Close Out all Uncovered Transactions and all Principal Agreements and set off (under Section 4 of the Agreement) Settlement Amounts owed under the Principal Agreements and amounts owed under the Uncovered Transactions (determined on the basis that the Closed-Out Party is in breach of its obligations thereunder) as Settlement Amounts for purposes of the Agreement. All Principal Agreements (and Uncovered Transactions where Part VII.2 is applicable) that have Closed Out according to their terms on or prior to the date a Close-Out Notice is given, and all Principal Agreements (and Uncovered Transactions where Part VII.2 is applicable) Closed Out by the Close-Out Notice are subject to the set-off provisions of Sections 3 and 4 of the Agreement.

(c) Exclusions

Section 2.1 also deals with the contingency that there may be a legal restriction or prohibition, or administrative or judicial action, making it unlawful to Close Out a Principal Agreement contrary to the intent and expectations of the parties. In that case, for purposes of the Agreement, that Principal Agreement (and Uncovered Transactions if Part VII.2 is applicable) will not be included in the set-off procedures described below.

(d) Close-Out Events Not Otherwise Modified

The basic framework of the Agreement is to leave unchanged the Close-Out Events specified in the underlying Principal Agreements (except as discussed above). Parties should be aware that Principal Agreements may have similar but not identical events of default (e.g., the definition of a "bankruptcy event" may differ in two Principal Agreements) and that the effect of the Agreement's provisions for Close-Out will be to allow the Close Out of all Principal Agreements in circumstances that may be slightly or in some cases significantly different from those provided for in any single Principal Agreement.

(e) Excluded Close-Out Events

Close-Out across a number of Principal Agreements obviously can have serious implications for the counterparties involved and potentially for financial markets as a whole. For this reason, certain events have been excluded from the definition of "Close-Out Event" through Part II of the Schedule. These are events that may have little relationship to the creditworthiness of the counterparty, such as default due to illegality, tax events or "Disruption Events" as defined in Section 5.1 of the 1998 FX and Currency Option Definitions published by ISDA, EMTA and the Foreign Exchange Committee. Obviously, parties may choose to remove or add to the exclusions from Close-Out Events listed in the Schedule.

(f) Right to Close Out Need Not Be Exercised

Section 2.2(c) of the Agreement clarifies that a Closing-Out Party may elect not to Close Out all of the Principal Agreements, but instead may choose to Close Out Principal Agreements (and Uncovered Transactions where Part VII.2 applies) according to their own terms without any reference to Section 3 and 4 of the Agreement. If all Principal Agreements (and Uncovered Transactions where Part VII.2 applies) have Closed Out automatically and the Closing-Out Party wishes to have Sections 3 and 4 of the Agreement apply thereto, Section 2.2(b) provides that the Closing-Out Party should promptly notify the other party that it is electing to have those provisions of the Agreement apply. A form of such notice is provided in Exhibit 2 attached hereto.

The decision whether to exercise the right to Close Out under Section 2 must be made within the time frame specified in Section 2.1, *i.e.*, while one of the listed events is continuing. A Close-Out Event under a Principal Agreement (or a breach of an Uncovered Transaction where Part VII.2 applies) will be deemed to be continuing and the Closing-Out Party may choose to exercise its rights under Section 2 of the Agreement to Close Out all Principal Agreements (and Uncovered Transactions where Part VII.2 applies) until the earlier of such time as the conditions constituting the Close-Out Event have ceased to exist or the Settlement Amount due under such Principal Agreement (or Uncovered Transaction where Part VII.2 applies) has been paid in full. With respect to a breach of a representation or warranty or a violation of a covenant under Section 5 of the Agreement, the Closing-Out Party's right to exercise its rights under Section 2 of the Agreement will continue until such breach or violation has been cured.

For commercial reasons some parties may prefer to have certainty that the Settlement Amounts under all Principal Agreements will in all circumstances be netted as provided for in the Agreement. An optional provision is therefore included in Part VII.3 of the Schedule to amend Section 2 of the Agreement to make the exercise of a Party's rights under the Agreement

mandatory upon a Close Out of any Principal Agreement. The Part VII.3 amendments also provide that if all Principal Agreements have automatically Closed Out, the netting provisions of this Agreement will be applied to the Settlement Amounts thereunder without the requirement that a Section 2 Notice be sent.

(g) Optional Adequate Assurances Provision

An optional provision has been included in Part VII.1 of the Schedule to give market participants the ability to amend each Principal Agreement to include as a Close-Out Event under the Agreement the failure by a party to give adequate assurances of its ability to perform its obligations within a specified number of Business Days of a written request to do so, when the other party has reasonable grounds for insecurity. This provision is based on the common law concept of anticipatory repudiation under which, when a party repudiates contractual duties prior to the date designated for performance or gives its counterparty reasonable grounds to believe that the first party may repudiate its contractual duties, the nonrepudiating party may, if reasonable, suspend any performance for which it has not received the agreed assurances and claim damages for breach where applicable. The optional provision set forth in Part VII.1 of the Schedule creates an express contractual right to Close Out a Principal Agreement when adequate assurances of due performance are not forthcoming, and makes that event a Close-Out Event under Section 2 of the Agreement. The Publishing Associations, however, do not intend that the failure to incorporate Part VII.1 would limit or otherwise adversely affect rights that a party may have under applicable law. Moreover, by incorporating the adequate assurance provision as an optional provision, the Publishing Associations are not necessarily recommending its usage, nor necessarily endorsing the concept of express contractual adequate assurance provisions. The incorporation of the optional adequate assurance provision is an important legal and commercial issue that should be subject to bilateral negotiation and resolution by the parties to the Agreement.

STEP 2: DETERMINING SETTLEMENT AMOUNTS (SECTION 3)

The mechanisms for valuing transactions under a particular Principal Agreement that has been Closed Out, setting off the obligations, and applying margin or collateral to obligations under such Principal Agreement, and other procedures for determining a Settlement Amount due under such Principal Agreement will be determined by the terms of such Principal Agreement.² The Agreement does not modify those provisions of the underlying contracts (except as it relates to timing of settlement of obligations as provided in Section 3.3 of the Agreement). For example, Section 5.1 of the IFEMA excludes from the Close-Out thereunder any transaction that may not be Closed Out under applicable law. Further, the Settlement Amount will be reduced to the extent collateral or other credit support has been applied to the payment obligations under any Principal Agreement. Based upon the terms of the applicable agreements, the Closing-Out Party may choose whether or not to apply credit support in determining a Settlement Amount. In deciding whether to exercise rights to apply collateral to a net obligation owed under a Principal Agreement or to call on a guarantee of payment of a net obligation owed, a party should consider that its right subsequently to do so may be adversely affected once the net obligation is set off in the "rolling" set-off process established in Section 4 of the Agreement and described below.

² With respect to Principal Agreements under which transactions are settled through a clearing agency or similar entity, such clearing arrangements in some cases result in the novation of some or all of the transactions under the relevant Principal Agreement and the substitution of the clearing entity as the counterparty on such transactions. Parties should consider the nature of their clearing arrangements to determine whether transactions settled through such arrangements should be included when calculating the Settlement Amount for the relevant Principal Agreement.

In determining the Settlement Amount under a particular Principal Agreement, it is important to note that in a number of industry standard form English law-governed master agreements, property (whether margin securities under the PSA/ISMA Global Master Repurchase Agreement or credit support under the ISDA Credit Support Annex Bilateral Form – Transfer) is transferred with the party holding the property having no obligation to redeliver such property after Close-Out has occurred. Rather, a monetary value of the property (title to which had been transferred to that party) is determined and the amount is included in the set-off of amounts owed, so that one party owes the other a net payment amount. Those amounts are Settlement Amounts under the Agreement. This is in contrast to many standard form New York law-governed credit support documents whereby "excess collateral" must be returned by one party to the other after the obligation to pay the net payment amount under the Principal Agreement has been met. That obligation to return property is *not* a Settlement Amount under the Agreement. This issue is discussed further in connection with Part VIII of the Schedule.

Section 3.3 of the Agreement amends the Principal Agreements so as to defer the settlement of Settlement Amounts in certain circumstances where they are yet to be determined, as further described below. The right to receive a Settlement Amount under a Principal Agreement can be a contractual right in which a security interest or other interest may be created under the law of many jurisdictions. Prior to entering into the Agreement the parties may wish to conduct reasonable diligence to assure that the right of a counterparty to receive a Settlement Amount in the future has not been pledged or transferred by the counterparty to a third party, or is not subject to an involuntary lien, potentially impairing or defeating set-off rights under the Agreement. The Agreement includes a representation and covenant in Section 5 in this respect; the representation is repeated in the proposed form of amendment (at Exhibit 1 hereto) that may be used to add a Principal Agreement to those covered by the Agreement.

STEP 3: SET-OFF AND SETTLEMENT PROCEDURES (SECTION 4)

(a) The Set-Off Process³

Under Section 4.1 of the Agreement, the obligation of a party to settle a Settlement Amount is deferred (with interest accruing at the contractual overdue interest rate specified in the relevant Principal Agreement) from the date on which it would be due under the Principal Agreement (as amended by the Agreement) until a date on which each party owes a Settlement Amount to the other. The Settlement Amounts are translated into a single Base Currency before being set off against one another (unless all Settlement Amounts are in a single currency other than the Base Currency in which case the Closing-Out Party may redesignate that currency as the Base Currency). On that date, the Settlement Amounts are set off, one against the other, under the Agreement and a Net Set-Off Amount is determined. That Net Set-Off Amount (with interest accruing thereon at the rate specified in Section 4.5(b)) is then carried forward for set-off against the next Settlement Amount subsequently determined to be due from the counterparty. These sequential set-offs of Settlement Amounts will eventually result in a single final net sum (the Final Net Settlement Amount) being owed under the Agreement by one party to the other on a "**Final Settlement Date**". Thus, it is critical that all Settlement Amounts be determinable. If all Settlement Amounts are owed by one party to the other, the set-off provisions of Section 4.1 do not apply and the Closing-Out Party will simply aggregate the Settlement Amounts to determine the Final Net Settlement Amount.

³ The meaning of the terms "netting" and "set-off" may differ in various jurisdictions. The terms are used interchangeably in these Guidance Notes and the use of one term or the other in the Agreement or the Guidance Notes is not intended to be dispositive of the legal characterization of these terms in any specific jurisdiction.

(b) Exclusions

Under Section 3.3 of the Agreement, if in the good faith judgment of the Closing-Out Party it is unlawful to include any Settlement Amount in the set-off process established in Section 4, that Settlement Amount will be excluded. (If the legal impediment is removed before the Final Net Settlement Amount is determined, then that Settlement Amount would no longer be excluded from the Section 4 set-off process.) This assures that a Final Net Settlement Amount can be determined. Sequential set-offs will not be needed, of course, if all valuations of Settlement Amounts are completed as of the same date. In this case, a single Net Set-Off Amount will be calculated and due on the Final Settlement Date.

A party to the Agreement may be a bank with more than one branch. Certain Principal Agreements, therefore, may have been entered into by that party through one or more designated branches. Regardless of which branch is the designated branch under a Principal Agreement, the Settlement Amount will be subject to the set-off procedures set forth in Section 4 of the Agreement. Therefore, where a bank has multiple branches, amounts to be settled under the Agreement are calculated without reference to any particular branch.⁴ This can present particular issues where a branch obligated to pay a Settlement Amount under a Principal Agreement is located in a jurisdiction (a so-called "**ring-fencing jurisdiction**") that will not permit any amount due to that branch to be included, in the event of the branch's receivership or conservatorship, in a set-off against Settlement Amounts owed by branches in other jurisdictions under other Principal Agreements. When a counterparty is obligated under a Principal Agreement to perform its obligation to pay a Settlement Amount at a branch other than its head office, legal advice in respect of the jurisdiction of the party's head office and the jurisdiction of the branch should be obtained to determine whether the Settlement Amount can lawfully be included in the Agreement's set-off provisions including in the event of receivership or conservatorship. If a Settlement Amount cannot legally be included in the set-off process under the Agreement, it is excluded from that process by Section 3.3.

Section 4.6 of the Agreement states that the rights to set off Settlement Amounts and otherwise apply Section 4 of the Agreement shall not limit or exclude any other rights of the Closing-Out Party. Thus, for example, if any transaction is excluded from the determination of a Settlement Amount because it cannot legally be Closed Out, or a Settlement Amount cannot legally be included in a set-off under the Agreement, the Closing-Out Party will continue to have all its contractual and other rights, including any set-off rights, applicable to those obligations.⁵

(c) Timing of Settlement

Settlement of the Final Net Settlement Amount is due on the same Business Day as the calculation statement if the calculation statement is delivered by 10:00 a.m. on such Business Day, or else on the following Business Day.

D. LEGAL EFFECTIVENESS

Section 6 of the Agreement and Part IV of the Schedule allow the parties to choose New York or English law as the governing law and provide for the parties to incorporate by reference provisions of a Principal Agreement in respect of service of process, procedural defenses, and

⁴ Section 4.4(b) of the Agreement states that the Final Net Settlement Amount due from such a multibranch party will be paid without any limitation as to where the debt is payable unless the parties to the Agreement have specified otherwise.

⁵ Parties may also wish to consider whether to amend Principal Agreements to exclude branches as counterparties that are located in "ring-fencing jurisdictions" or whether to include provisions in their Principal Agreements making such a branch's obligation an explicit obligation as well of the bank's head office (see, e.g., Section 10(a) of the ISDA Master Agreement (Multicurrency-Cross Border)).

certain other matters. Rather than incorporating by reference the foregoing provisions, parties may choose to include the text of such provisions in Part IX of the Schedule. Parties may also wish to include in the Agreement provisions for exclusive jurisdiction, service of process, waiver of jury trial and waiver of immunities that will override any similar provisions in the Principal Agreements, particularly if there is a concern that disputes regarding a Principal Agreement may be brought in one forum and the same substantive dispute (e.g., valuation of a Settlement Amount) may be raised in relation to the Agreement in a different forum. An example of such provisions is provided in Exhibit 3 attached hereto. Parties may also choose a law other than New York or English law to govern the Agreement.

*Parties are advised to consult counsel on the enforceability of the Agreement in respect of particular counterparties, including in the event of bankruptcy or insolvency, regardless of what governing law is chosen.*⁶

With a view to enhancing the enforceability of the Agreement in the event of insolvency of a U.S. counterparty, optional representations contained in Part III of the Schedule may be included. Paragraph 1 states that each party is a "financial institution" under the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. §§ 4401-4407 ("**FDICIA**"), and regulations thereunder, and that the parties intend the Agreement to be a "netting contract" and each payment entitlement and payment obligation thereunder to be a "covered contractual payment entitlement" or "covered contractual payment obligation" as defined in FDICIA. If the representations are true when the Agreement is entered into, and the agreement is governed by the laws of a state of the United States such as New York, FDICIA provides that the netting of such payment obligations and entitlements shall be given effect. *Parties should therefore obtain advice of counsel on the potential applicability and benefits of FDICIA where one party is a U.S. entity.*⁷

Paragraph 2 of Part III provides that a payment under the Agreement is intended by the parties to be a "margin payment", "settlement payment" or a "transfer" under those provisions of the U.S. Bankruptcy Code (the "**Bankruptcy Code**") that protect certain types of financial products from the staying and avoidance powers of a trustee in bankruptcy. These provisions of the Bankruptcy Code, however, currently may not protect all aspects of the broad cross-product netting provided for in the Agreement.⁸

E. OTHER TERMS OF PRINCIPAL AGREEMENTS

Before entering into the Agreement, parties may have included in a Principal Agreement a provision for the set-off and netting of amounts owed by the parties to one another under that and other Principal Agreements (i.e., cross-product netting across separate contracts). If the operation of that provision is mandatory by its express terms, it would be prudent to include in

⁶ TBMA has obtained opinions of New York and English counsel on the enforceability of the Agreement governed by New York or English law as well as English and U.S. bankruptcy opinions on the effectiveness of the Agreement's settlement provisions. Parties need to consider, when entering into the Agreement, choice of law issues that may arise in the context of cross-border transactions and may wish to refer to the Supplemental Guidance Notes published by TBMA in June 1997 relating to the TBMA Master Repurchase Agreement (1996 version) and the PSA/ISMA Global Master Repurchase Agreement (1995 version) for a discussion of such issues at www.bondmarkets.com.

⁷ Proposed amendments to FDICIA that are being considered by the U.S. Congress would eliminate the current requirement that a netting agreement be governed by the law of one of the states of the United States to qualify for FDICIA's protections. These amendments are contained in H.R. 833, 106th Cong., 1st Sess. (1999) and other related legislation.

⁸ Amendments to the Bankruptcy Code that would allow for more comprehensive cross-product netting are currently being deliberated by the U.S. Congress. These amendments are contained in H.R. 833, 106th Cong., 1st Sess. (1999) and other related legislation.

Part IX of the Schedule to the Agreement an additional Section stating that any such provision is superseded and replaced by the Agreement.

Even though the current form of the Agreement is bilateral, some parties may have included cross-affiliate netting provisions in a Principal Agreement (e.g., by use of the Guarantee and Assignment provision set forth in the User's Guide to the 1992 ISDA Master Agreements). If the exercise of that provision is optional, the Closing-Out Party can consider, with advice of counsel at the time a Close-Out Event occurs, whether exercising its rights thereunder would put at risk rights under the Agreement. If the operation of the provision is mandatory by its express terms, an amendment to the relevant master agreement might be considered to make it optional. TBMA, along with the other Publishing Associations, are committed to examining how best to achieve a legally effective master agreement for cross-affiliate netting, and to taking the steps necessary to obtain that result, including the possibility of further amendments or annexes to the Agreement.

F. OTHER PROVISIONS

Section 7 contains a provision on the transfer and assignment of rights under the Agreement in the event of a merger, consolidation or amalgamation of a party and for the assignment of the right to receive a Final Net Settlement Amount under Section 4.

Section 8 provides for notices to be given by telephone, mail, facsimile, e-mail, electronic message, telegraph, messenger or otherwise, and for such notices to be deemed delivered on the day on which received or, if not received, when delivery was attempted in good faith. Telephonic notice must be confirmed in writing and will be effective only if at least one other specifically listed means of notice has been attempted. Parties should, in providing notice, give due consideration to evidentiary rules which may apply to such notice in any judicial proceedings.

Parties may include additional provisions or amendments to the Agreement in Part IX of the Schedule. If parties anticipate the imposition of any withholding or similar tax or levy on any payments made under the Agreement, they may include a provision for grossing up such payments in Part IX of the Schedule.

G. PART VIII OF THE SCHEDULE (CREDIT SUPPORT)

Part VIII of the Schedule (Credit Support) to the Agreement contains alternative provisions by which parties can (i) retain property provided in relation to a Principal Agreement which has been Closed Out that exceeds the amount required to meet obligations under such Principal Agreement and (ii) apply the value of that property to settlement of the Final Net Settlement Amount under the Agreement. These alternatives are intended to address the issue, for example, that "excess collateral" under a New York law-governed Principal Agreement may otherwise have to be returned by a Closing-Out Party to the other party when a Final Net Settlement Amount has not yet been determined or paid under the Agreement.

The first alternative to achieve this result provides for all collateral posted in relation to any Principal Agreement also to serve as security for payment of the Final Net Settlement Amount under the Agreement. If a Close-Out Event has occurred under a Principal Agreement and excess property is held under such Principal Agreement, each party may continue to retain its security interest in the property to assure payment of the Final Net Settlement Amount under the Agreement. The first alternative in Part VIII accordingly amends each Principal Agreement and related credit support document for the foregoing purpose. Industry trade associations may wish to provide specific guidance to members as to the provisions of the Principal Agreements published by such trade associations that may be amended by Part VIII. Parties who enter into agreements with counterparties that may be subject to proceedings under the Bankruptcy Code should be aware that the Bankruptcy Code as currently enacted may not

protect certain types of cross-product collateralization from the risks of an automatic stay in bankruptcy.⁹

The second alternative can apply not only to assets pledged as collateral but also to assets that are not pledged as collateral and that might have to be returned to the counterparty after the Close-Out of the Principal Agreement. For example, the second alternative could be used to cover not only collateral but also excess repo securities that might have to be returned under applicable law after the Close-Out of all transactions under the TBMA Master Repurchase Agreement. Under this alternative, the relevant Principal Agreements and any related credit support document are amended so as to allow a Closing-Out Party to convert any obligation of either party to return property obtained thereunder to a debt to pay the market value of the property. That payment obligation is included in the determination of the Settlement Amount for the relevant Closed-Out Agreement. In that way, any "excess" collateral, "excess" margin or other property will be included in the set-off procedures of Section 4 of the Agreement. This is similar to the manner by which English law-governed Principal Agreements, such as the ISDA Master Agreement with Credit Support Annex (Transfer) or the PSA/ISMA Global Master Repurchase Agreement, which involve outright transfers of property, determine Settlement Amounts thereunder.

Parties may choose to use either or both of the alternatives in Part VIII of the Schedule in respect of specific Principal Agreements and related credit support documents. In addition, collateral or third party guarantees can be separately established as security specifically for the payment of the Final Net Settlement Amount. Other approaches to creating security are also possible.¹⁰ Prior to incorporating one or both of the alternative provisions in Part VIII, each party may wish to conduct reasonable diligence that the other party has not (voluntarily or involuntarily) previously pledged or transferred an interest in the property involved (e.g., the right to receive "excess" collateral) to a third party, thereby potentially impairing the rights to be obtained under Part VIII. As noted above, representations, warranties and covenants are included in the Agreement to provide some protection against this risk as well.

Use of either of the credit support arrangements in Part VIII requires careful consideration by market participants in light of complex accounting, legal and regulatory considerations which may differ among multiple jurisdictions.

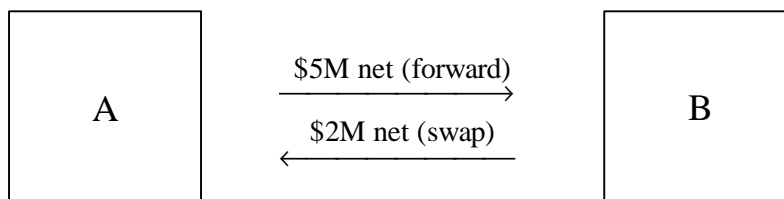
H. EXAMPLES

The following examples are intended to illustrate the operation of the provisions of the Agreement. The examples do not provide conclusive guidance regarding the operation of the provisions of the Agreement nor do they constitute advice on the legal effectiveness of any provision of the Agreement. Parties should obtain appropriate legal and regulatory advice regarding the operation of the Agreement's provisions and the effect of applicable laws. Defined terms that are not otherwise defined in the examples are used as defined in the Agreement.

⁹ Amendments to the Bankruptcy Code that would allow for more comprehensive cross-product netting and collateralization are currently being deliberated by the U.S. Congress. These amendments are contained in H.R. 833, 106th Cong., 1st Sess. (1999) and other related legislation.

¹⁰ Parties may wish to consider a variant of the first alternative so that the "excess collateral" related to each Principal Agreement secures the payment of the Settlement Amount under each and every other Principal Agreement. Another approach is for a security interest to be created in the contractual rights to receive payment, property or excess collateral under each Principal Agreement when no further obligations thereunder are due to secure the payment of the Settlement Amount under each and every other Principal Agreement. In some jurisdictions such a security interest may need to be "filed" or "registered" to be perfected.

EXAMPLE 1: OPERATION OF SECTIONS 2, 3 AND 4 OF THE AGREEMENT



The Facts

A and B have recently entered into the following two transactions: (i) a British pounds sterling-denominated interest-rate swap with a final settlement date of June 5, 2000, documented under an interest rate swap master agreement not in an industry standard-form (the "**IRSMA**"); and (ii) a forward sale of mortgage-backed securities with a settlement date of January 4, 2001, documented under the TBMA Master Securities Forward Transaction Agreement (the "**MSFTA**"). A and B have not entered into any other transactions under the IRSMA or the MSFTA. The IRSMA contains an automatic early termination provision that will be triggered by the initiation of insolvency proceedings with respect to either party. The MSFTA documenting the forward transaction does not contain an automatic early termination provision similar to that in the IRSMA, nor any cross-default provisions. A and B have also entered into the Agreement which designates the IRSMA and MSFTA as "Principal Agreements" under the Agreement. On January 5, 2000, A files a petition in bankruptcy.

Applying Section 2

A's insolvency event on January 5, 2000 triggers the automatic early termination provisions in the IRSMA, which in turn triggers the provisions for Close-Out in Section 2 of the Agreement. B notifies A by a Close-Out Notice (in the form appearing as Exhibit 2 hereto) that, based on the automatic early termination of the IRSMA (due to the insolvency event of default), B has exercised its right under Section 2 of the Agreement to Close Out the securities forward under the MSFTA. B designates January 5, 2000 as the effective date in the Close-Out Notice. B lists in the Close-Out Notice the MSFTA, and lists the IRSMA as having automatically Closed Out.

Applying Section 3

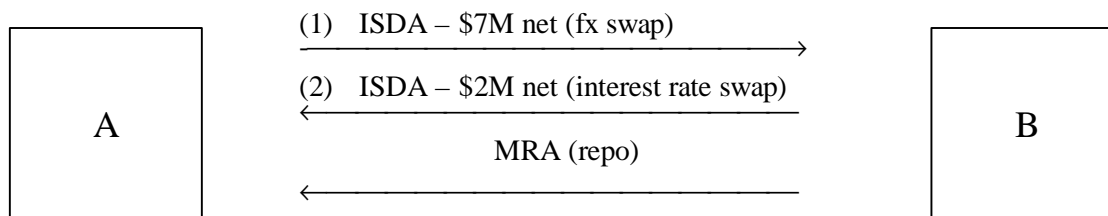
Pursuant to Section 3.1 of the Agreement, B determines the Settlement Amount owed under the terms of the IRSMA, using the market quotation method specified in the IRSMA, and determines that B owes A a Settlement Amount of £1.25 million under the IRSMA. Under the IRSMA, once a Settlement Amount is determined, it is due on the day notice thereof is effective. Under the Agreement, however, payment of the amount is deferred until the Settlement Amount owed under the MSFTA is determined.

B then follows the calculation method set forth in the MSFTA to determine that A owes B a Settlement Amount under the MSFTA of \$5 million. The U.S. dollar has been specified by the parties as the Base Currency. Pursuant to Section 3.2 of the Agreement and based upon the spot USD/£ bid exchange rate on the Set-Off Date, B determines that the amount that B owes A under the IRSMA (including accrued interest) is equal to \$2 million. As a Settlement Amount is also owed under the MSFTA on that day, a Set-Off Date occurs under Section 4.1 of the Agreement.

Applying Section 4

Pursuant to Section 4.1 of the Agreement, B sets off the amounts owed under the IRSMA and MSFTA, and, pursuant to Section 4.4(b) of the Agreement, B provides A with a calculation statement before 10:00 a.m. on January 6, 2000 and notifies A that A owes B a Final Net Settlement Amount of \$3 million and that this amount is due and payable by the close of business on January 6, 2000. If not paid on January 6, the Final Net Settlement Amount will accrue interest pursuant to Section 4.5(c) of the Agreement from January 6, 2000 until the date of actual payment.

EXAMPLE 2: DEFINITION OF CLOSE-OUT EVENT



The Facts

A and B have entered into the following transactions: (i) a repo transaction, with a maturity date of March 1, 2000, documented under the TBMA Master Repurchase Agreement (the "**MRA**"); (ii) a currency swap, with a final settlement date of June 17, 2000, documented under the ISDA Master Agreement (1992 version) (the "**ISDA**"); and (iii) an interest-rate swap, with a final settlement date of July 4, 2000, documented under the same ISDA. A and B also have entered into the Agreement. Part II of the Schedule to the Agreement does not exclude any additional events of default under either the MRA or the ISDA from the definition of Close-Out Event under the Agreement. On May 1, 2000, the auditor of A notifies B that A lacked the authority to enter into the MRA.

Applying Section 2

Although the repo under the MRA matured on March 1, 2000 and there are no current transactions under the MRA, the breach by A of the due authorization representation is an event of default under the MRA which gives B the right to terminate all transactions (if any) under the MRA. Because it was not excluded from the definition of Close-Out Event in Part II of the Schedule to the Agreement, the breach of representations event of default under the MRA is a Close-Out Event under the Agreement. Thus, B exercises its right to terminate the MRA and notifies A that a Close-Out Event has occurred under the MRA and that B has exercised its right under Section 2 of the Agreement to Close Out the ISDA as of the date the notice is sent.

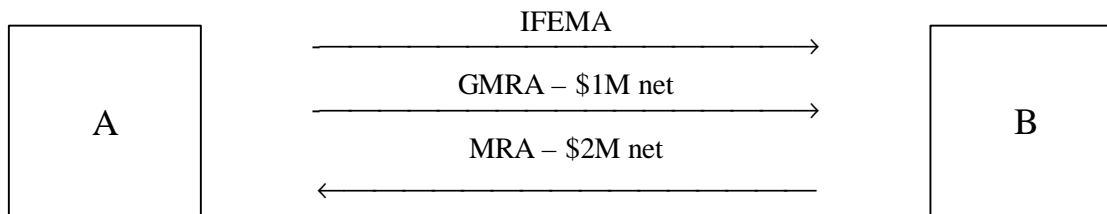
Applying Section 3

Pursuant to Section 3.1 of the Agreement, B determines the Settlement Amount owed under the terms of the ISDA. Using the market quotation method specified in the ISDA, B determines that A owes B \$7 million under the currency swap and that B owes A \$2 million under the interest rate swap. Pursuant to the terms of the ISDA, B nets these payment amounts and determines that A owes B a Settlement Amount of \$5 million under the ISDA. This will be the Final Net Settlement Amount under the Agreement.

Applying Section 4

Pursuant to Section 4.4(b) of the Agreement, B provides A with a calculation statement of the Final Net Settlement Amount and notifies A at noon on May 3, 2000 that A owes B a Final Net Settlement Amount of \$5 million. A must pay this amount to B by the close of business on May 4, 2000. If not paid on May 4, the Final Net Settlement Amount will accrue interest pursuant to Section 4.5(c) of the Agreement from May 4, 2000 until the date of actual payment.

EXAMPLE 3: CLOSE-OUT



The Facts

A and B have entered into the following transactions: (i) a U.S. Treasury repo transaction, with a maturity date of March 1, 2000, documented under the TBMA Master Repurchase Agreement (the "**MRA**"); (ii) a GILT repo transaction with a maturity date of January 6, 2000, documented under the PSA/ISMA Global Master Repurchase Agreement (the "**GMRA**"); and (iii) ten U.S. dollar/Euro forward contracts and one U.S. dollar/peso non-deliverable forward contract, each documented under the International Foreign Exchange Master Agreement (the "**IFEMA**") and which mature in February through June 2000. A and B have also entered into the Agreement under which the MRA, GMRA and IFEMA are listed as Principal Agreements. On January 6, 2000, B defaults on the payment of the repurchase price under the GMRA, which is a Close-Out Event under the GMRA.

Applying Section 2

A provides a Close-Out Notice to B stating that it is exercising its right under Section 2 of the Agreement to Close Out the transactions under all Principal Agreements effective January 6, 2000. On January 7, a court order is issued enjoining A from Closing Out the non-deliverable forward transaction. Although A may succeed in efforts to remove the injunction and prevail on the merits of the case, A cannot Close Out the non-deliverable forward transaction under the IFEMA due to the injunction. By the terms of the IFEMA, it can nonetheless determine a Settlement Amount in respect of the ten other forward contracts under the terms of the IFEMA. A therefore proceeds to apply Sections 2, 3 and 4 of the Agreement to the GMRA, MRA and IFEMA.

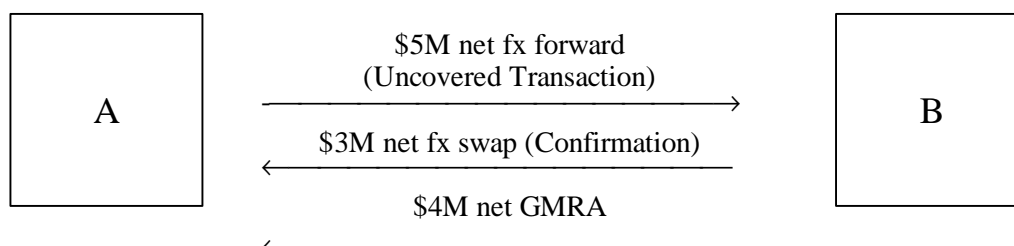
Applying Section 3

Pursuant to Section 3.1, A determines the Settlement Amount owed under the MRA (according to its terms) by B to A is \$2 million and that the Settlement Amount owed under the GMRA (according to its terms) by A to B is \$1 million and that the Settlement Amount owed under the IFEMA happens to be zero. The two Settlement Amounts under the MRA and GMRA are due coincidentally on the same day, January 7, 2000.

Applying Section 4

Each Settlement Amount is set off against the other and A provides B with a calculation statement at 5:00 p.m. on January 7, 2000 of the Final Net Settlement Amount, based on the Close-Out of the two Principal Agreements, by which B owes A \$1 million. B must pay this amount to A by the close of business on January 8, 2000. If not paid on January 8, the Final Net Settlement Amount will accrue interest pursuant to Section 4.5(c) of the Agreement from January 8, 2000 until the date of actual payment.

EXAMPLE 4: OPERATION OF CROSS-DEFAULT



The Facts

A and B have entered into the following transactions: (i) a repo, with a settlement date of February 2, 2000, documented under the PSA/ISMA Global Master Repurchase Agreement (the "**GMRA**"); (ii) a non-deliverable currency forward, with a settlement date of June 5, 2000, that is documented by a confirmation that only contains the economic terms of the trade and that was sent by A to B (the "**Uncovered Transaction**"); and (iii) a currency swap, with a settlement date of July 5, 2000, that is documented by a long-form confirmation which incorporates the general terms of the ISDA Master Agreement (1992 version) (the "**Confirmation Trade**"). A and B have also entered into the Agreement which designates the GMRA as a Principal Agreement under the Agreement. A and B have also included in the Agreement optional Part VII.2 of the Schedule to the Agreement. The Uncovered Transaction is brought within the scope of the Agreement by Part VII.2. The Confirmation Trade, because it incorporates the general terms of the ISDA Master Agreement, is covered by the Agreement by the inclusion of provision #16 in Part I of the Schedule to the Agreement. There are no cross-default provisions included in the GMRA or Confirmation Trade providing that a payment default under either is an event of default in the other agreement. On February 2, 2000, A defaults on its obligations to B under the GMRA by failing to make a payment when due for securities delivered to A.

Applying Section 2

A's default on February 2, 2000 is a Close-Out Event under the GMRA. Because the occurrence of a Close-Out Event under the GMRA has triggered the provisions for Close-Out in Section 2 of the Agreement, B has the right to Close Out the Uncovered Transaction and the Confirmation Trade, as well as the GMRA. B, exercising its rights under Section 2 of the Agreement, notifies A that a Close-Out Event has occurred under the GMRA and that B has exercised its right under Section 2 of the Agreement additionally to Close Out the Uncovered Transaction as well as the Confirmation Trade as of the date the notice is sent.

Applying Section 3

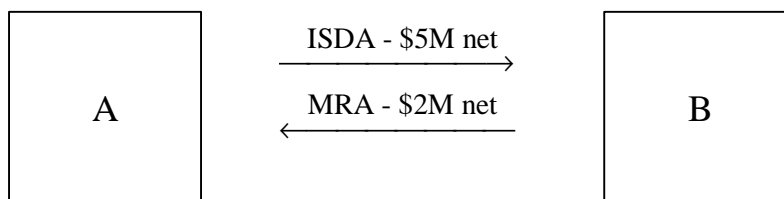
Pursuant to Section 3.1 of the Agreement, B determines that B owes A a Settlement Amount of \$4 million under the terms of the GMRA. B follows the market quotation method specified for the Confirmation Trade (which incorporates the general terms of the ISDA Master Agreement) to determine that B owes A a Settlement Amount of \$3 million thereunder. B determines that A owes B a Settlement Amount of \$5 million with respect to the Uncovered Transaction. Assume all three amounts under the Closed-Out Agreements are due to be paid on the same day.

Applying Section 4

Pursuant to Section 4.1 of the Agreement, B sets off the Settlement Amounts owed under the GMRA, the Uncovered Transaction and the Confirmation Trade, and notifies A at 11:00 a.m. on February 3, 2000 that

B owes A a Final Net Settlement Amount of \$2 million. B must pay the Final Net Settlement Amount of \$2 million to A before the close of business on February 4, 2000. If not paid on February 4, the Final Net Settlement Amount will accrue interest pursuant to Section 4.5(c) of the Agreement from February 4, 2000 until the date of actual payment.

EXAMPLE 5: CONTINUATION OF A CLOSE-OUT EVENT



The Facts

A and B have entered into the following transactions: (i) a currency swap, with a final settlement date of November 13, 2000, documented under the ISDA Master Agreement (1992 version) (the "**ISDA**"); and (ii) a repo transaction, with a maturity date of June 15, 2000, documented under the TBMA Master Repurchase Agreement (the "**MRA**"). A and B have also entered into the Agreement. Part II of the Schedule to the Agreement does not exclude any additional events of default under either the MRA or the ISDA from the definition of Close-Out Event under the Agreement. The termination event provision under the ISDA relating to Credit Event Upon Merger (as defined in the ISDA) is applicable. On April 1, 2000, A merges with X and the credit-rating of the merged successor entity decreases so as to trigger the ISDA's credit event upon merger provision, thus constituting a Close-Out Event under the ISDA.

Continuing Right to Close Out

Although B has the right under Section 2 of the Agreement to Close Out the transactions under the ISDA and the MRA because of the occurrence of a Close-Out Event under the ISDA, B initially chooses not to exercise this right and instead Closes Out the ISDA according to its terms. B determines that A owes B a Settlement Amount of \$5 million under the ISDA. B demands payment of this amount from A on May 1, 2000. A does not pay B by the deadline for payment imposed by B of May 4, 2000. Under Section 2.1 of the Agreement, A's non-payment means that the Close-Out Event under the ISDA is continuing and B retains its right under Section 2 of the Agreement to Close Out both the ISDA and the MRA.

On May 5, 2000, B decides to exercise its rights under Section 2 of the Agreement and notifies A that a Close-Out Event has occurred under the ISDA and that B has exercised its right under Section 2 of the Agreement to Close Out the repo transaction under the MRA as of the date specified in the Close-Out Notice.

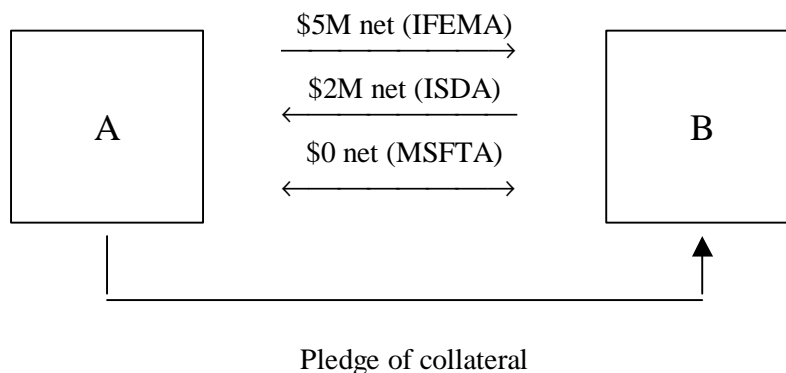
Applying Section 3

Pursuant to Section 3.1 of the Agreement, B determines the Settlement Amount owed under the terms of the MRA. B determines that B owes A a Settlement Amount of \$2 million under the MRA.

Applying Section 4

B sets off the Settlement Amount of \$5 million that A owes B under the ISDA against the Settlement Amount of \$2 million that B owes A under the MRA and arrives at a Final Net Settlement Amount of \$3 million that A owes B. B notifies A at 12:00 noon on May 5, 2000 that A owes B a Final Net Settlement Amount of \$3 million. A must pay this amount to B before the close of business on May 6, 2000. If not paid on May 6, the Final Net Settlement Amount will accrue interest pursuant to Section 4.5(c) of the Agreement from May 6, 2000 until the date of actual payment.

EXAMPLE 6: AUTOMATIC TERMINATION OF ALL PRINCIPAL AGREEMENTS; USE OF COLLATERAL



The Facts

A and B have entered into (i) a TBMA Master Securities Forward Transaction Agreement governed by New York law (the "**MSFTA**"); (ii) an ISDA Master Agreement (1992 version) governed by New York law (the "**ISDA**"); and (iii) an International Foreign Exchange Master Agreement governed by English law (the "**IFEMA**"). The only transactions that A and B have entered into thereunder are: (i) a forward sale of Treasury securities, with a final settlement date of February 4, 2000, documented under the MSFTA; (ii) a currency swap with a final settlement date of June 5, 2000, documented under the ISDA; and (iii) a non-deliverable currency forward with a settlement date of July 5, 2000, documented under the IFEMA.

A and B have entered into a New York law-governed ISDA Credit Support Annex in connection with the ISDA (the "**New York Annex**") pursuant to which A has provided B with U.S. Treasury securities worth \$3 million as collateral. A has also provided B with cash collateral in the amount of \$2 million under a security agreement relating to the IFEMA and A has provided B with \$4 million in cash collateral under the MSFTA.

A and B have entered into the Agreement, pursuant to which the parties have designated the MSFTA, the ISDA and the IFEMA as Principal Agreements. Pursuant to the first alternative in Part VIII of the Schedule to the Agreement, A has pledged the collateral under the MSFTA, the New York Annex and the security agreement related to the IFEMA to secure A's obligations to pay the Final Net Settlement Amount under the Agreement (as well as its obligations under the MSFTA, ISDA and IFEMA, respectively). On February 4, 2000, A files for bankruptcy in the United States.

Applying Section 2

A's bankruptcy filing is an automatic termination event under each of the MSFTA, the ISDA and IFEMA. B sends a notice pursuant to Section 2.2(b) that Sections 3 and 4 of the Agreement will apply.

Applying Section 3

Pursuant to Section 3.1 of the Agreement, B determines the Settlement Amount owed under the terms of the MSFTA, and determines that A owes B \$4 million with respect to the forward trade under the MSFTA. Pursuant to the MSFTA's terms, B sets off that amount against the collateral of \$4 million that B holds. A's obligations to B under the MSFTA have now been discharged in full. B determines that B owes A a Settlement Amount of \$2 million under the terms of the ISDA. B also determines that A's collateral of U.S. Treasury securities under the

New York Annex is worth \$3 million. But for the amendment made to the New York Annex by the first alternative in Part VIII of the Schedule to the Agreement, it is unclear whether B would be required, under the terms of the New York Annex, to return to A U.S. Treasury securities worth \$3 million. However, B does not return the U.S. Treasury securities collateral to A because A has pledged this collateral to secure A's obligation to pay the Final Net Settlement Amount (if any) under the Agreement.

B determines that A owes B \$7 million under the non-deliverable currency forward under the terms of the IFEMA. Because the IFEMA allows the non-defaulting party to set off credit support pledged by the defaulting party against the net payment owed by the defaulting party under the IFEMA, B sets off the \$7 million net payment owed by A under the IFEMA against the cash collateral of \$2 million pledged by A in connection with the IFEMA, and B determines that A owes B a Settlement Amount of \$5 million under the IFEMA. As a Settlement Amount is also owed under the ISDA, a Set-Off Date occurs under Section 4.1 of the Agreement.

Applying Section 4

Pursuant to Section 4.1 of the Agreement, B sets off the Settlement Amount of \$2 million that B owes A under the ISDA against the Settlement Amount of \$5 million that A owes B under the IFEMA and arrives at a Net Set-Off Amount of \$3 million that A owes B. By the terms of the New York Annex, as amended by the first alternative in Part VIII of the Schedule to the Agreement, B liquidates the U.S. Treasury securities that A pledged to B as collateral and sets off the proceeds thereof (\$3 million) against A's net payment obligation to B of \$3 million. Pursuant to Section 4.4(b) of the Agreement, B provides A with a calculation statement that describes the set-off of the Settlement Amounts and the related collateral and states that there is no Final Net Settlement Amount owing under the Agreement.

**Form of Amendment to the Cross-Product
Master Agreement to Include
Additional Principal Agreements**

Amendment, dated as of [SPECIFY DATE OF AMENDMENT] (the "Amendment"), to the Cross-Product Master Agreement, dated as of [SPECIFY DATE OF AGREEMENT] (the "Agreement"), between [SPECIFY NAME OF PARTY] ("Party A") and [SPECIFY NAME OF COUNTERPARTY] ("Party B")

WHEREAS, Party A and Party B wish to amend the Agreement to include certain additional Principal Agreements (as defined in the Agreement) within the scope of the Agreement,

NOW, THEREFORE, Party A and Party B agree to amend the Agreement as follows:

1. Amendment to the Agreement

Part 1 of the Schedule is hereby amended to include the following agreements, which agreements shall, as of the effective date of this Amendment, be deemed to be "**Principal Agreements**" under the Agreement:

[#.] [Specify name of master agreement]

2. Representations and Warranties

Each party represents and warrants to the other that:

- (a) it is duly authorized to execute and deliver this Amendment and to perform its obligations under the Agreement and has taken all necessary actions to authorize such execution, delivery and performance,
- (b) the person signing this Amendment on its behalf is duly authorized to do so on its behalf,
- (c) this Amendment constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, conservatorship, receivership, moratorium or other similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law), and
- (d) it has not assigned, transferred, created or permitted to exist any lien or other encumbrance on, or otherwise disposed of or purported to assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of any of its rights to any amounts that may be owed to it under any Principal Agreement to any third party, and, so long as the Agreement is in effect, it will not assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of, or purport to assign, transfer, create or permit to exist any lien or other encumbrance on or otherwise dispose of any of its rights to any amounts that may be owed to it under any Principal Agreement, to any third party.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

[NAME OF PARTY A]

By:
Name:
Title:

[NAME OF PARTY B]

By:
Name:
Title:

Form of Section 2 Notice

[Name of counterparty]
[Address]

Re: Notice Pursuant to Section 2 of the Cross-Product Master Agreement, dated [●], between [name of Party A] and [name of Party B] (the "Agreement")

Dear Sirs:

[Notice under Section 2.2(a):

We hereby notify you pursuant to Section 2.2(a) that: [a Close-Out Event, namely (specify the event) in Principal Agreement #__ in Part I of the Schedule to the Agreement, has occurred.] [the event specified in Section 2.1(b)¹ of the Agreement, namely (specify the representation or warranty which has been breached), has occurred.] [the event specified in Section 2.1(c)² of the Agreement, namely (specify the covenant which has been breached), has occurred.]

We further notify you that we have exercised our right, pursuant to Section 2.1 of the Agreement, to Close Out the Principal Agreements covered by the Agreement. The Close-Out of the Principal Agreements shall be effective on [●], notwithstanding any provision to the contrary in any such Principal Agreement. Defined terms not otherwise defined herein are used herein as defined in the Agreement.

[The following Principal Agreement(s) have been previously Closed Out according to their terms:
]³

[Notice under Section 2.2(b):⁴

We hereby notify you pursuant to Section 2.2(b) of the Agreement that the settlement of the Settlement Amounts under all Principal Agreements will be settled at the times and in the manner set forth in Sections 3.3 and 4 of the Agreement. Defined terms not otherwise defined herein are used herein as defined in the Agreement.]

¹ Section 2.1(c) should be cited instead if Part VII.2 of the Schedule has been included in the Agreement.

² Section 2.1(d) should be cited instead if Part VII.2 of the Schedule has been included in the Agreement.

³ Include this optional provision only if one or more Principal Agreements have automatically Closed Out or otherwise have been previously Closed Out.

⁴ To be used only if all Principal Agreements have Closed Out automatically by their terms and Part VII.3 of the Schedule has not been included in the Agreement.

We are in the process of valuing the transactions that have been Closed Out under each Closed-Out Agreement and will notify you of the Final Net Settlement Amount under the Agreement once it has been determined.

Sincerely yours,

[NAME OF CLOSING-OUT PARTY]

By:
Name:
Title:

**Sample Provisions for Exclusive Jurisdiction, Service of Process,
Waiver of Jury Trial and Waiver of Immunities**

The following provisions may be included in Part IX of the Schedule by parties wishing to include provisions in the Agreement relating to exclusive jurisdiction, service of process, waiver of trial by jury and waiver of immunities that would override similar provisions in the Principal Agreements:

"The following provisions are applicable to the Agreement and shall amend and supersede any provisions in each Principal Agreement relating to jurisdiction by courts over the parties, service of process, waiver of jury trial and waiver of immunities upon (i) the giving of a Section 2 Notice or (ii) where all Principal Agreements have Closed Out automatically by their terms, the application of Sections 3.3 and 4 hereof to such Principal Agreements:

- (a) *Exclusive Jurisdiction.* With respect to any suit, action or other proceedings arising out of or in relation to this Agreement ("**Proceedings**"), each Party (i) [agrees that the Supreme Court of the State of New York, County of New York, or the United States District Court for the Southern District of New York shall have exclusive jurisdiction][submits to the exclusive jurisdiction of the courts of England] and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and specifically consents to personal jurisdiction in such courts in any Proceeding and waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such Party. Although each Party may bring substantive Proceedings only in the courts specified above and must not seek judgment on the merits in any other courts, each Party may seek protective seizure or similar provisional measures in other courts. If by seeking such measures in other courts a Party would become or becomes obliged to seek judgment on the merits in such other courts, Proceedings may not be taken or continued in such other courts. Nothing in this section shall limit the right of any Party to bring one or more actions, suits, provisional remedies or other proceedings in any other court of competent jurisdiction to enforce any judgment obtained in the Proceedings referred to above.
- (b) *Service of Process.* Party A irrevocably appoints [•] located in [the State of New York][England] as its agent for service of process. Party B irrevocably appoints [•] located in [the State of New York][England] as its agent for service of process. If for any reason any Party's process agent is unable to act as such, such Party will promptly notify the other Party and within thirty days will appoint a substitute process agent acceptable to the other Party. If no such substitute process agent is appointed, service on the original process agent will continue to constitute good service. Nothing in this Agreement will affect the right of either Party to serve process in any other manner permitted by law.
- (c) *Waiver of Jury Trial.* Each Party irrevocably waives any and all rights to trial by jury in any Proceedings.
- (d) *Waiver of Immunities.* Each Party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v)

execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings."