



*The Bond Market Association
European Office / Europabüro*

St. Michael's House
1 George Yard
London EC3V 9DH
Great Britain / Großbritannien
Tel: +44.20.77 43 93 00
Fax: +44.20.77 43 93 01
www.bondmarkets.com



*International Securities
Market Association*

Rigistrasse 60
P.O. Box
8033 Zurich
Switzerland
Tel: +41.1.363 4222
Fax: +41.1.363 7772
www.isma.org

April 7, 2004

Global Master Repurchase Agreement 1995 and 2000 versions: Legal Opinions: notes on opinions jointly obtained by ISMA and TBMA

Introduction

*The following is a note for users of either the PSA/ISMA Global Master Repurchase Agreement 1995 (the **1995 Agreement**) or the TBMA/ISMA Global Master Repurchase Agreement 2000 (the **2000 Agreement**, each an **Agreement**), principally (a) summarising amendments recommended by counsel in certain jurisdictions; (b) indicating instances where the opinion does not cover the Agency Annex or any part of it; and (c) summarising changes made in the 2002, 2003 and 2004 update exercise to the initial opinions obtained in 2000 and 2001. The annexes to this note contain tables showing the annexes to the 1995 Agreement and 2000 Agreement which are covered by each opinion.*

This note is based upon legal opinions issued by counsel in each of the following jurisdictions and practical guidance given by counsel within such legal opinions. It should not be regarded as constituting legal advice, nor is it a summary of, or an evaluation of the merits or strength of, any of the legal opinions (including in respect of the availability of netting) issued by counsel in respect of the Agreement. This note updates and replaces the version published on June 16, 2003 and describes the position as at April 2, 2004.

This note does not purport, and should not be considered, to be a guide to or explanation of the issues or considerations raised or addressed in the legal opinions. Reference should always be made to the legal opinions issued by counsel and, in the event of any conflict between the contents of this note and such legal opinion, the contents of such legal opinion shall prevail. Parties should therefore consult with their legal advisers and any other adviser they deem appropriate.

Neither ISMA nor TBMA nor their respective advisers assume any responsibility for any use to which this note may be put.

EUROPEAN UNION JURISDICTIONS

The updated opinions for 2002 for member states of the European Union (Austria, Belgium, England, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands and Portugal) have been amended to take account of the European Union Council Regulation (EC) No 1346/2000 on insolvency proceedings (the “Insolvency Regulation”), which entered into force on 31 May 2002, and Council Regulation (EC) No 44/2001 (the “Brussels Regulation”) on jurisdiction and recognition and enforcement of judgments in civil and commercial matters, which came into force on 1 March 2002.

The updated opinions for 2004 for Austria, England, Finland, Germany and Ireland, have been amended to take into account the European Parliament and Council Directive 2002/47/EC on financial collateral arrangements (the “Collateral Directive”). Member States were required to implement the Collateral Directive by 27 December 2003. The updated opinions for Belgium, Italy, France, Luxembourg, the Netherlands, Portugal and Spain do not take into account the Collateral Directive because the Directive has not been implemented as at the date of the opinion. The opinion for Germany is based on the draft implementing legislation, although it is not expected that the draft implementing legislation upon which the opinion will be given will be materially amended prior to entering into force.

AUSTRIA

Legal opinion of Wolf Theiss & Partners dated 21 December 2000

Counsel has not opined on the Addendum to the Agency Annex for multiple Principal Transactions.

Updated opinion dated 29 March 2002

Other than the EU Regulations referred to above, there are no material changes to the updated opinion.

Updated opinion dated 30 April 2003

The opinion has been amended to reflect the new International Insolvency Act which came into force at different times in relation to different entities. The provisions relating to credit institutions will enter into force on 5 May 2004. All other amendments entered into force on 30 June 2003.

Updated opinion dated 24 March 2004

The opinion has been updated to reflect the new Act on Financial Collateral Arrangements which implements the Collateral Directive and came into force

on 1 December 2003. The Act applies to various entities as explained in the opinion.

BELGIUM

Legal opinion of Freshfields Bruckhaus Deringer, Brussels dated 20 December 2000

Attachment procedures under Belgian law are not adequately covered by the definition of “Act of Insolvency” in the Agreement; counsel propose that this be corrected by the addition of the following as additional paragraph 2(a)(vii) within Annex 1 of the Agreement:

“In respect of [Belgian party] the occurrence of an attachment, whether conservatory or executory (*saisie conservatoire* or *saisie exécutoire/bewarend beslag* or *uitvoerend beslag*), on [any] [a material part] of its assets.”

Updated opinion dated 25 March 2002

As well as the EU Regulations referred to above, the updated opinion reflects the implementation in Belgium of the EU Settlement Finality Directive (Council Directive 98/26/EC on settlement finality in payment and securities settlement systems).

Updated opinion dated 19 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 31 March 2004

The opinion has been amended to include a description in Annex 3 of the legal entities which benefit from the immunity from enforcement under Belgian law (*uitvoeringsimmunititeit/immunité d'exécution*).

CANADA

Legal opinion of Stikeman Elliott dated 20 December 2000

Liquidation or reorganisation of certain entities may occur pursuant to laws that are not, strictly speaking, insolvency laws, although counsel is of the opinion that the reference to “analogous proceeding” in paragraph (vi) of the definition of Act of Insolvency and that the reference to an “arrangement...with creditors” in paragraph (i) of the definition would be construed to cover such proceedings. However, for greater certainty, when dealing with a Canadian party, parties may wish to include the following additional clause regarding paragraph (iv) of the definition of Act of Insolvency in Annex 1 of the Agreement:

“Without limiting the provisions of paragraph 2(a) or 10 of the Agreement, in respect of a party incorporated in Canada:

- (a) the reference in paragraph 2(a)(vi) to analogous proceedings shall include a reference to any corporate law proceedings with potential application to such party in the event of its insolvency; and
- (b) the occurrence of such proceeding shall, upon the service of a Default Notice, constitute an Event of Default for the purpose of paragraph 10 of the Agreement.”

Updated opinion dated 31 March 2002

The updated opinion refers to a recent case which provides further support for the enforceability of close-out and netting or liquidation rights in the context of a corporate plan of arrangement.

Updated opinion dated 19 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 29 March 2004

There are no material changes to the 2003 opinion.

ENGLAND

Legal opinion of Freshfields Bruckhaus Deringer, London dated 28 March 2001

Counsel has not opined on the Addendum to the Agency Annex for multiple Principal Transactions for the period prior to their allocation to a specific Principal.

Updated opinion dated 28 March 2002

As well as the EU Regulations referred to above, the updated opinion reflects the coming into force of the Financial Services and Markets Act 2000 on 1 December 2001.

Updated opinion dated 28 March 2003

The updated opinion has been amended to reflect the coming into force of the Insolvency Act 2000 and to refer to the Enterprise Act 2002 which is expected to come into force during 2003. The opinion notes that a small company moratorium does not fall within the definition of “Act of Insolvency”.

Updated opinion dated 29 March 2004

The updated opinion has been amended to reflect the coming into force of the Financial Collateral Arrangements (No.2) Regulations 2003 which implement the Collateral Directive. The effect of the Regulations is to confirm the effectiveness of such arrangements notwithstanding certain provisions of law

applicable on insolvency which could otherwise restrict their enforceability or provide for them to be set aside.

The updated opinion briefly considers the European Council and Parliament Directive 2001/24/EC on the Reorganisation and Winding up of Credit Institutions which is required to be implemented in Member States by 5 May 2004. Whilst no opinion is given on the effect of the Directive (which has not yet been implemented in the United Kingdom), it is not expected that implementation will adversely affect the substance of the opinion.

The updated opinion has also been amended to reflect the implementation of the Enterprise Act 2002 and supporting secondary legislation, which has introduced a mandatory set-off rule in administration in certain circumstances as explained in the opinion.

FINLAND

Legal opinion of Roschier-Holmberg & Waselius dated 22 December 2000

No specific points.

Updated opinion of Roschier Holmberg, Attorneys Ltd. dated 31 March 2002

1. The statement that the Finnish Act on Certain Conditions of Securities and Currency Trading as well as of a Settlement System (1999) is not applicable to Pooled Transactions under the Addendum to the Agency Annex for multiple Principal Transactions to the extent that obligations of several parties are aggregated outside a "clearing system" (as defined in that Act) has been deleted in the updated opinion. This paragraph has been replaced by a statement that no opinion is given as to Transactions under the Addendum to the Agency Annex prior to their allocation to (a) a single Principal or (b) to several Principals so that each of them is responsible for that part of the Transaction which has been allocated to it.

2. As well as the EU Regulations referred to above, the updated opinion reflects the coming into force of the Act on Temporary Interruption of Operations of Credit Institutions (2001).

Updated opinion dated 31 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 24 March 2004

The opinion has been amended to take into account the Finnish Act on Financial Collateral which implements the Collateral Directive and came into force on 1 February 2004.

The updated opinion has also been amended to include certain insurance companies within the scope of the opinion.

The updated opinion has also been amended to include the new Act on Statutory Limitation which came into force on 1 January 2004. The new Act reduces the limitation period as explained in the opinion.

FRANCE

Legal opinion of Freshfields Bruckhaus Deringer, Paris dated 29 March 2001

Some legal commentators have expressed reservations concerning the eligibility of on-demand transactions since the repurchase date would not be fixed under such transactions. To minimise this risk, the parties could, inter alia, enter into transactions with a one day term, which could be rolled on from day to day.

Updated opinion dated 28 March 2002

As well as the EU Regulations referred to above, the updated opinion reflects certain amendments to the French monetary and financial code which unified the close-out netting schemes applicable to repurchase transactions, securities lending transactions and other transactions relating to financial instruments.

Updated opinion dated 27 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 29 March 2004

There are no material changes to the 2003 opinion.

GERMANY

Legal opinion of Freshfields Bruckhaus Deringer, Frankfurt dated 30 March 2001

1. Companies organised under public law (including *Landesbanken*) are not covered by the opinion.
2. It is advisable to include a final date by which the Repurchase Date must have occurred in respect of on demand or open repo transactions.
3. In counsel's opinion it is in the interest of preserving the applicability of the close-out and set-off provisions of the Agreement to ensure that Transactions and the Agreement terminate prior to the formal commencement of Insolvency Proceedings.

In order to avoid potential uncertainties relating to the timing of the close-out of Transactions under the Agreement, counsel has recommended that the following wording be included in Annex 1 of the Agreement:

“(i) This paragraph applies where a party to the Agreement is incorporated in Germany.

(ii) In this paragraph -

"Insolvenzordnung" means the Insolvency Act which came into force in Germany on 1 January 1999, **"Insolvenzverfahren"** means insolvency proceedings instituted under that Act and **"Insolvenzverwalter"** means an *Insolvenzverwalter* appointed under that Act.

(iii) Without limiting any other provision of Paragraph 2(a) or Paragraph 10 of the Agreement, in the case of a party incorporated in Germany -

(aa) the references to an analogous officer in Paragraph 2(a)(iii) and (v) shall include an *Insolvenzverwalter*;

(bb) the reference to any analogous proceeding in Paragraph 2(a)(iv) shall include an *Insolvenzverfahren*;

(cc) an Event of Default shall for the purposes of Paragraph 10 of the Agreement occur immediately, and without the need for the service of a Default Notice, if an application is made for the institution of an *Insolvenzverfahren* **[or if measures are taken pursuant to §§ 46 or 46 a para. 1 of the German Banking Act (*Kreditwesengesetz*)]**.”

The wording in square brackets in the above proposed amendment is recommended by counsel to avoid the ability to set-off under paragraph 10 of the Agreement being impeded by action taken under §§ 46 and 46a of the German Banking Act by making such action an automatic termination event (with the consequence, however, that it is not in the control of the Non-Defaulting Party if and when the Agreement will terminate in such situations). However, the Federal Banking Supervisory Authority has indicated that it does not consider the amendment in square brackets to be desirable from its point of view (see further the relevant opinion, paragraph 10.4).

Counsel is of the view that the deletion of the grace period of 30 days provided in relation to certain Acts of Insolvency seems essential as otherwise, even if the operation were automatic, the early termination may not be possible before formal commencement of Insolvency Proceedings. In the absence of the automatic early termination, the Agreement may terminate under the provisions of §104 of the German Insolvency Act, though the administrator (*Insolvenzverwalter*) may, where §104 of the German Insolvency Act does not apply, demand continuation of the Agreement.

Updated opinion dated 25 March 2002

Other than the EU Regulations referred to above, there are no material changes to the updated opinion.

Updated opinion dated 19 March 2003

There are no material changes to the 2002 opinion.

Updated opinion date 31 March 2004

The opinion is amended to reflect the draft implementing legislation for the Collateral Directive. Counsel will confirm when the implementing legislation comes into force whether or not it will materially affect the conclusions in the opinion.

Insurance companies (*Versicherungsunternehmen*) are not included in the scope of the opinion.

IRELAND

Legal opinion of McCann FitzGerald dated 14 December 2000

1. Counsel does not opine on the Addendum to the Agency Annex in respect of multiple Principal Transactions.
2. Counsel point out that if an agreement envisages netting across transactions which include transactions *other* than financial contracts, that agreement will *not* constitute a netting agreement for the purposes of the Netting Act and the enforceability of the netting provisions of the Agreement will be subject to all insolvency, bankruptcy, liquidation, reorganization, moratorium, examinership, trust schemes, preferential creditors, fraudulent transfer and other similar laws relating to or affecting rights of creditors of the party, generally.

Updated opinion dated 25 March 2002

As well as the EU Regulations referred to above, the updated opinion refers to the Asset Covered Securities Act 2001.

Updated opinion dated 26 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 24 March 2004

The updated opinion is amended to reflect the European Communities (Financial Collateral Arrangements) Regulations 2004 which came into effect on 9 January 2004 and which implement the Collateral Directive.

ITALY

Legal opinion of Freshfields Bruckhaus Deringer, Milan dated 30 October 2001

1. The opinion does not cover cases where the Agreement is entered into by an Italian counterparty which is constituted by the Italian government or an Italian local government authority.

2. The opinion does not cover Part VIII of the Schedule to the Cross-Product Master Netting Agreement.

3. It is prudent to fulfil the requirement of Article 2704 of the Civil Code with respect to the Agreement, any transaction entered into under the Agreement and any Margin provided under the Agreement in one of the forms set out below and, this being the case, more specifically, in order to oppose to the creditors of the insolvent Italian Counterparty and to the relevant liquidator or administrator in the Insolvency Proceeding of such Italian Counterparty that:

- (i) the relevant Agreement, transaction or Margin was entered into or provided; and
- (ii) any payment was made (including any netting having operated thereunder),

prior to the time of the commencement of the Insolvency Proceeding of that Italian Counterparty.

Date certain may be achieved (i) by a notary public certificate on each Agreement, transaction or margin posting; (ii) by a notarial certification of the photocopy of the Agreement, transaction or margin posting; (iii) by a mail stamp through the Italian so called “*autospedizione* system” on each Agreement, transaction or margin posting; or (iv) through electronic signing and time validation procedures under D.P.R. 513 of 10 October 1997 (and its implementing provisions) on each Agreement, transaction or margin posting.

Updated opinion dated 27 March 2002

As well as the EU Regulations referred to above, the scope of the updated opinion has been extended to cover transactions in equity securities in the following circumstances:

- (i) it covers a period (i.e. it has a Purchased Date and a Repurchase Date, in any relevant period) outside the dividend period. For this purpose, ***dividend period*** means, as regards Italian companies, the period running from: (i) the date on which the dividend of the relevant company is first paid to shareholders, to (ii) the date on which the dividend on the relevant equity securities is actually cashed in by the

shareholder. In general, the dividend period is typically in May and June in each year, although another time of the year is also possible; and

- (ii) to the extent Italian equities are the subject matter of the transaction entered into pursuant to the Agreement, it does not cause any counterparty to reach/fall below any shareholding threshold (by the party acquiring or disposing of the relevant shareholding) more specifically provided by the regulations, which triggers notice obligations to the relevant regulators or require specific approval by the regulators. Such thresholds are in general of 2, 5, 7.5, 10 and other percentages are more specifically set out in the regulations. More specifically any acquisition or disposal of a shareholding which exceeds or is reduced to the relevant threshold, if with respect to (i) banks, financial institutions or funds or (ii) insurance companies, may require prior approval by the relevant regulator, ie. the Bank of Italy or ISVAP (the Italian insurance companies regulator), as the case may be.

Updated opinion dated 21 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 31 March 2004

The opinion has been amended to take into account the recent legislation in relation to industrial restructuring of Major Corporate Entities (*ristrutturazione di grandi imprese in stato d'insolvenza*). As counsel explains, this procedure is half-way between an Administration Proceeding and a Liquidation Insolvency Proceeding and is intended to achieve the industrial restructuring of Major Corporate entities. Banking entities and insurance companies are excluded from this insolvency proceeding.

The opinion has also been amended to reflect the fact that dividends for Italian listed equity securities which are held in Monte Titoli are paid automatically.

JAPAN

Legal opinion of Mitsui, Yasuda, Wani & Maeda dated 22 December 2000

Cross-border set-off is subject to the *post facto* reporting requirement under the Japanese foreign exchange control regulations. "The report of the payment etc. not through the banks" is required to be submitted to the Minister of Finance of Japan through the Bank of Japan before the 20th day of the month following the month in which the cross-border set-off was effected, if the amount being set-off exceeds 5 million yen. No other action will be required for the set-off to become effective.

Updated opinion dated 27 April 2002

The updated opinion reflects an amendment to the Enforcement Regulations for the Law concerning Close-out Netting of Specified Financial Transactions Entered into by Financial Institutions, etc. which took effect on 27 December 2001.

Updated opinion dated 10 July 2002

The scope of the opinion has been extended to cover the Agreements when amended by the Japanese Securities Annex. This annex contains the addition of an automatic early termination event, which is required to enable users of the Agreement to fall within the scope of an exemption from withholding tax (see ISMA circular to members no. 7 of August 2002 available at www.isma.org and TBMA's website (www.bondmarkets.com) for more information on this issue). The opinion also recommends the use of the automatic early termination event to avoid the risk of a non-defaulting party being prevented from exercising its rights by the issue by a court of a preservation order.

Updated opinion dated 31 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 26 March 2004

The opinion refers to the new Bankruptcy Law and amendments to other laws concerning insolvency proceedings. Following the coming into force of the new law and amendments, counsel will confirm whether there is any adverse effect on the conclusions stated in the opinion.

LUXEMBOURG

Legal opinion of Kremer Associés & Clifford Chance dated 26 March 2001

1. Counsel note that demand Transactions (as opposed to fixed term Transactions) as referred to in the Agreement may not necessarily be considered to come within the definition of repo under the Repo Law. Overnight, one-day rolling transactions, (i.e. a one day term repo, which is then rolled over into another one day term repo with the delivery of Equivalent Securities pursuant to the termination of the first repo only being deemed to be made) may not necessarily be excluded from qualification as a repo under the Repo Law, as there is a term and a provision for a retransfer, even though the parties agree otherwise by entering into a further transaction.

2. Counsel does not opine on the insolvency consequences in relation to the use of the Addendum for multiple Principal Transactions, in particular in relation to the insolvency of the Agent or only one of the Principals.

3. Counsel consider that it is uncertain whether *gestion contrôlée et sursis de paiement* and *sursis de paiement et gestion contrôlée* are comprised with the definition of “Act of Insolvency” and suggest that the following is added as an additional clause to the definition of Act of Insolvency in Annex 1 of the Agreement:

“Without prejudice to the provisions of Clause 2(a) of the Agreement, the definition of “Act of Insolvency” shall include, in relation to any party established in Luxemburg, whether with its principal office or through a branch:

- (i) the filing of a petition for “*sursis de paiement et gestion contrôlée*” proceedings, as defined in Article 60 of the Law dated 5 April 1993 on the financial sector;
- (ii) the opening of “*sursis de paiement et gestion contrôlée*” proceedings as provided for in Article 77 of the Law dated 30 March 1988 on UCIs and Articles 55ff. of the Law dated 21 June 1999 on pension funds; and
- (iii) the petition for the opening of “*gestion contrôlée et sursis de paiement*” proceedings as defined in the Grand-Ducal Decree dated 24 May 1935 on suspension of payments and controlled management.”

Updated opinion dated 28 March 2002

As well as the EU Regulations referred to above, the paragraph relating to the requirement for a special acceptance clause for the purpose of specifically accepting the choice of jurisdiction of the English courts has been deleted.

Updated opinion dated 31 March 2003

The opinion includes an assumption that where the Agreement has been entered into before 1 March 2002, the Luxembourg party has signed a separate acceptance provision in relation to the clause granting jurisdiction to the English courts. An example of such a provision is:

“For the purpose of Article 1 of the Protocol annexed to the Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial matters, signed in Brussels on September 27, 1968, and without prejudice to the foregoing execution of this Agreement by the parties hereto, [Luxembourg party] expressly and specifically confirms its agreements to the provisions of paragraph 17 of this Agreement.

Signed[Luxembourg party]”.

Updated opinion dated 29 March 2004

There are no material changes to the 2003 opinion.

NETHERLANDS

Legal opinion of Nauta Dutilh dated 20 December 2000

No specific points.

Updated opinion dated 28 March 2002

Other than the EU Regulations referred to above, there are no material changes to the updated opinion.

Updated opinion dated 28 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 29 March 2004

The opinion has been amended to refer to the fact that the appointment of the silent administrator would fall within the definition of Act of Insolvency, even though it would not normally be regarded as an insolvency proceeding.

The opinion also briefly refers to the EU Directive (2001/24/EC) on the Reorganisation and Winding-up of Credit Institutions though counsel states this is not yet in force.

PORTUGAL

Legal opinion of PLMJ dated 21 December 2000

1. Counsel is of the opinion that the “saneamento” (rehabilitation) of credit institutions, financial companies and investment firms consisting of extraordinary measures for creditors protection imposed by the Bank of Portugal is not adequately covered by the definition of Act of Insolvency in the Agreement. Counsel suggest that this would be corrected by inserting an additional paragraph 2(a)(vii) in Annex 1 to the Agreement:

“In respect of a Portuguese counterparty, the imposition by any supervisory entity of extraordinary measures for the composition or rehabilitation (the so-called “saneamento”) of credit institutions, financial institutions and investment firms”.

2. Counsel is also of the view that the following minor amendments might be of assistance, in order to better ensure that the Agreement specifically addresses certain terms and concepts which are applicable in Portugal to the rehabilitation and bankruptcy of Portuguese counterparties:

- (a) paragraph 2 (a) (ii) - deletion of the expression “in writing” and for the wording to be amended to say “its admitting that it is unable or that there is a risk that it may become unable or is unwilling to pay its debts (or some of its debts) as they become due or otherwise if it actually ceases or suspends its payments”;

- (b) paragraph 2 (a) (iv) – counsel suggests the addition of “rehabilitation”; and
- (c) paragraph 2 (a) (v) - though counsel is of the view that this is somewhat covered by the expression “analogous officer”, counsel suggests adding “surveillance committee”.

3. In order for set-off to become effective where available, it should be notified to the other Party. To the extent that set-off shall operate automatically on the occurrence of an Event of Default no additional notice requirement shall in principle be required.

Updated opinion dated 27 March 2002

Other than the EU Regulations referred to above, there are no material changes to the updated opinion.

Updated opinion dated 26 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 30 March 2004

The opinion refers to the new Portuguese Insolvency Code which will come into effect in September 2004.

SPAIN

Legal opinion of Freshfields Bruckhaus Deringer dated 31 March 2003

Counsel confirms that the opinion is not affected if the Agreement is amended in accordance with the terms included in the Guidance Notes for the use of the Agreement with Spanish debt securities published by the Associations and which are included as appendix II to the opinion.

Legal opinion of Freshfields Bruckhaus Deringer dated 25 March 2004

The opinion refers to the new Insolvency Law which is due to come into force on 1 September 2004.

SWITZERLAND

Legal opinion of Niederer Kraft & Frey dated 22 December 2000

1. Although counsel is of the view that the Swiss courts would interpret the definition of Acts of Insolvency in accordance with the laws of England, there is a possibility that due to insufficient evidence as to the application of such laws the courts would interpret the definition in accordance with Swiss law. Counsel therefore recommends that specific Swiss insolvency terms be referred to in the Agreement if an Agreement is concluded with a Swiss Party, by including the following wording in Annex 1 to the Agreement:

“Insert at the end of sub-section 2 (a) a new sub-section:

‘for the avoidance of doubt, with respect to Swiss law, the above sub-sections (i)-(vi) shall be construed so as to include (without limitation) acts and proceedings analogous to those mentioned in the relevant sub-section: (i) under the Swiss Federal Statute on Debt Prosecution and Bankruptcy of 11 April 1889 (as amended) and the pertaining ordinances (*Konkurseröffnung; Nachlassverfahren; Nachlassstundung; Nachlassverträge; Notstundung*), (ii) the Swiss Federal Statute on Banks and Saving Banks of 8 November 1934 (as amended) and the pertaining ordinances, (*Fälligkeitsaufschub; Stundung; besondere Vorschriften über das Konkurs- und Nachlassverfahren*), (iii) bankruptcy and composition proceedings following the recognition of a foreign bankruptcy or a foreign composition agreement with creditors or similar proceedings (*Anerkennung ausländischer Konkursdekrete; Anerkennung ausländischer Nachlassverträge und ähnlicher Verfahren*) under the Swiss Federal Statute on Private International Law of 18 December 1987 and (iv) any substitute or supplementing legislation.’ ”

2. Counsel recommends that parties minimise possible cherry-picking risk by providing in paragraph 10 of the Agreement that the opening of a bankruptcy, the filing of a composition proceeding or any other insolvency related proceeding shall be deemed an Act of Insolvency which results in an immediate Event of Default which does not require a Default Notice. Counsel recommends that such wording, which is modelled on the Swiss Annex to the GMRA 1995, is used also in cases where the parties do not enter into the Swiss Annex if a Swiss party is a party to the Agreement. Counsel suggests that parties amend paragraph 2(a) of the Agreement by adding an additional sub-section (vii) in Annex 1 to the Agreement which reads as follows:

“For the avoidance of doubt, the opening of a bankruptcy (*‘Konkurseröffnung’*) against such party by decision of a bankruptcy court or the filing by or against such party of a composition proceeding or any other insolvency related proceeding, in which case, without limiting paragraph 10 (a) (iv) of the Agreement, the occurrence of an Act of Insolvency referred to in this sub-paragraph (vii) shall constitute an immediate Event of Default with respect to which it shall not be necessary to serve a Default Notice.”

Updated opinion dated 28 March 2002

There are no material changes to the updated opinion.

Updated opinion dated 19 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 24 March 2004

The opinion outlines the implications of the amendment to the Banking Statute which is expected to come into force on 1 July 2004, however counsel does not opine on the new Statute. Counsel will confirm when the amendment to the Banking Statute comes into force whether or not it will materially affect the conclusions in the opinion.

UNITED STATES

Legal opinion of Clifford Chance Rogers & Wells dated 15 December 2000

Although counsel have opined on the Agency Annex and the Addendum to the Agency Annex for multiple Principal Transactions, counsel's opinion does not extend to the enforceability of obligations against a Principal prior to the allocation of a particular Transaction.

Updated opinion dated 26 March 2002

There are no material changes to the updated opinion.

Updated opinion dated 19 March 2003

There are no material changes to the 2002 opinion.

Updated opinion dated 25 March 2004

There are no material changes to the 2003 opinion.

Table 1: Annexes to GMRA 1995

	Austria	Belgium	Canada	England	Finland	France	Germany	Ireland
Agency	√	√	√	√	√	√	√	√
Agency: addendum for multiple principals	X	√	√	√ ¹	√ ¹	√	√	X
Buy/sell back	√	√	√	√	√	√	√	√
Bills of exchange	√	√	√	√	√	√	√	√
EMU	√	√	√	√	√	√	√	√
Equities	√	√	√	√	√	√	√	√
Gilts	√	√	√	√	√	√	√	√
Net paying securities	√	√	√	√	√	√	√	√
Italian	√	√	√	√	√	√	√	√
Japanese	X	X	X	X	X	X	X	X
Netherlands	X	X	X	X	X	X	X	X
Swiss	X	X	X	X	X	X	X	X

¹ Subject to certain assumptions

Table 1 (cont): Annexes to GMRA 1995

	Italy	Japan	Luxembourg	Netherlands	Portugal	Spain	Switzerland	USA
Agency	√	√	√	√	√	√	√	√
Agency: addendum for multiple principals	√	√	X	√	√	√	√	√
Buy/sell back	√	√	√	√	√	√	√	√
Bills of exchange	√	√	√	√	√	√	√	√
EMU	√	√	√	√	√	√	√	√
Equities	√ ²	√	√	√	√	√	√	√
Gilts	√	√	√	√	√	√	√	√
Net paying securities	√	√	√	√	√	√	√	√
Italian	√	√	√	√	√	√	√	√
Japanese	X	√	X	X	X	X	X	X
Netherlands	X	X	X	√	X	X	X	X
Swiss	X	X	X	X	X	X	√	X

² Subject to certain assumptions

Table 2: Annexes to GMRA 2000

	Austria	Belgium	Canada	England	Finland	France	Germany
Agency	√	√	√	√	√	√	√
Agency: addendum for multiple principals	X	√	√	√ ¹	√ ¹	√	√
Buy/sell back	√	√	√	√	√	√	√
Bills of exchange	√	√	√	√	√	√	√
Equities	√	√	√	√	√	√	√
Gilts	√	√	√	√	√	√	√
Canadian	X	X	√	X	X	X	X
Italian	√	√	√	√	√	√	√
Japanese	X	X	X	X	X	X	X
Netherlands	X	X	X	X	X	X	X

¹ Subject to certain assumptions

Table 2 (cont): Annexes to GMRA 2000

	Ireland	Italy	Japan	Luxembourg	Netherlands	Portugal	Spain	Switzerland	USA
Agency	√	√	√	√	√	√	√	√	√
Agency: addendum for multiple principals	X	√	√	X	√	√	√	√	√
Buy/sell back	√	√	√	√	√	√	√	√	√
Bills of exchange	√	√	√	√	√	√	√	√	√
Equities	√	√ ²	√	√	√	√	√	√	√
Gilts	√	√	√	√	√	√	√	√	√
Canadian	X	X	X	X	X	X	X	X	X
Italian	√	√	√	√	√	√	√	√	√
Japanese	X	X	√	X	X	X	X	X	X
Netherlands	X	X	X	X	√	X	X	X	X

² Subject to certain qualifications