



Perbadanan Insurans Deposit Malaysia
Malaysia Deposit Insurance Corporation

CONSULTATION PAPER ON
PROPOSALS TO ACHIEVE CONFIRMATION OF “ENFORCEABILITY
OF CLOSE-OUT NETTING IN MALAYSIA UNDER THE MALAYSIA
DEPOSIT INSURANCE CORPORATION ACT 2005”

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1. INTRODUCTION

1.1 CONTEXT

- (1) The recitals in the Malaysia Deposit Insurance Corporation Act 2005 (the “Act”) states, among other matters, that:

“...the stability of the financial system is a key determinant of the economic growth and prosperity of Malaysia; ...

.. special provisions are required in the public interest to empower the Corporation to implement promptly the resolution actions set out in this Act at a minimum cost to the financial system...”

- (2) The objects of Perbadanan Insurans Deposit Malaysia (“PIDM”) under the Act are to:

- (i) administer a deposit system under the Act;
- (ii) provide insurance against the loss of part or all deposits of a member institution;
- (iii) provide incentives for sound risk management in the financial system; and
- (iv) promote or contribute to the stability of the financial system.

- (3) In achieving its objects aforesaid, PIDM shall act in such manner as to minimize costs to the financial system.

- (4) In furtherance of its objects, PIDM:

- (i) is empowered to assume control of the whole of the assets, liabilities, businesses and affairs of a member institution, and carry on the whole of its businesses and to manage the assets, liabilities and affairs, or assume control of such part of its assets, liabilities, businesses and affairs including disposal of assets, and carry on such part of its businesses and affairs or appoint any person to do so on its behalf, once PIDM has received a notice from Bank Negara Malaysia (“BNM”) that the member institution has ceased, or, is likely to cease, to be viable¹; and
- (ii) may also appoint a conservator to administer an affected person (as defined in the Act) if it is satisfied that:

¹ Section 71(1)(c) of the Act.

- (a) the primary affected person — (i) is unable or likely to be unable to pay its debts; or (ii) is unable or likely to be unable to fulfil its obligations to its creditors;
 - (b) the survival of the primary affected person and the whole or any part of its assets as a going concern may be achieved;
 - (c) a more advantageous realisation of the assets of the primary affected person may be achieved than a winding-up; or
 - (d) the appointment may achieve a more advantageous realisation or a more expeditious settlement of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether present or future, or whether vested or contingent².
- (5) The International Swaps and Derivatives Association, Inc. (“ISDA”), which represents participants in the privately negotiated or over-the-counter derivatives industry, has obtained legal opinions from Malaysian counsel on the enforceability in Malaysia of provisions relating to:
- (i) the netting or setting off of offsetting positions between counterparties;
 - (ii) the prompt access to collateral; and
 - (iii) the close-out or termination of positions quickly without being subject to prolonged legal stays
- (collectively, “close-out netting provisions”) contained in ISDA agreements.
- (6) The Malaysian counsel has opined that, in general, the close-out netting provisions are enforceable, subject to certain important qualifications in the Pengurusan Danaharta Nasional Berhad Act 1998 (“Danaharta Act”) and the Act.
- (7) The provisions in the Act that impact the close-out netting provisions are sections 27, 76, 80 and the Third Schedule. The issue posed by the Danaharta Act will not be addressed in this consultation paper.
- (8) ISDA understands that, given the qualifications in the Malaysian legal opinion as aforesaid, its members generally do not recognize close-out netting as being enforceable in Malaysia for regulatory capital purposes. ISDA, together with BNM and PIDM have been exploring ways of addressing the concerns regarding the enforceability of close-out netting

² Section 27(1) of the Act.

in Malaysia, for the purposes of facilitating the development of the derivatives industry in Malaysia.

- (9) ISDA has proposed that PIDM promulgate certain regulations under the Act and issue a policy statement on the basis which is discussed below in this consultation paper.
- (10) In response to the above, PIDM is issuing for consultation, certain proposed measures to help address the concerns regarding the enforceability of close-out netting in Malaysia.

1.2 CONSULTATION PROCESS

- (1) PIDM hereby invites written comments from interested parties on the issues raised in this consultation paper, including the draft Regulations and the draft policy statement. Notwithstanding this, interested parties are not confined to respond on the issues raised and are encouraged to raise any other relevant issues.
- (2) Written comments should be submitted no later than 23 August 2007 to:

Ms. Lim Lee Na
Perbadanan Insurans Deposit Malaysia
P.O. Box 13071
50798 Kuala Lumpur

Enquiries: 03-21737436
E-mail: legal@pidm.gov.my

- (3) Your comments may be made public by PIDM. If you do not want any of your comments to be made public, please indicate accordingly in your response.

2. BACKGROUND

2.1 SECTIONS 76 AND 80 OF THE ACT

- (1) Once PIDM or the appointed person assumes control of a member institution, section 76 of the Act stipulates, inter alia, that, as from the date of the assumption of control of the member institution by PIDM or the appointed person, as the case may be:
 - (i) no creditor of the member institution has any remedy against the member institution or its assets;

- (ii) no creditor has any right of set off against the member institution, which for greater certainty, does not include the consolidation of accounts maintained in the normal course for the purpose of providing clearing and settlement services or the services referred to in section 79 of the Act; and
- (iii) no person may terminate or amend any agreement with the member institution or claim an accelerated payment under any such agreement with the member institution by reason only of —
 - (a) the insolvency of the member institution;
 - (b) a default, before the assumption of control under section 71(1)(c) by PIDM or the appointed person, as the case may be, takes effect, by the member institution in the performance of its obligations under the agreement; or
 - (c) assumption of control under section 71(1)(c) by PIDM or the appointed person, as the case may be

(collectively, “the stay of proceedings”).
- (2) By virtue of section 80 of the Act, the stay of proceedings does not apply to certain agreements or transactions (“Financial Agreements or Transactions”) listed in section 80, which may be set off or terminated in accordance with their terms. The current list of Financial Agreements or Transactions in section 80 includes the following:
 - (i) a currency or interest rate swap agreement;
 - (ii) a spot, future, forward or other foreign exchange agreement;
 - (iii) a commodity swap;
 - (iv) a repurchase agreement;
 - (v) any derivative, combination or option in respect of, or agreement similar to, an agreement or transaction referred to in paragraphs (i) to (iv);
 - (vi) any master agreement in respect of any agreement or transaction referred to in paragraphs (i) to (iv); or
 - (vii) a guarantee of the liabilities under an agreement or transaction referred to in paragraphs (i) to (iv).

- (3) Under section 80(h) of the Act, "... any agreement or transaction of a kind prescribed in the regulations" would also be exempt from the application of section 76. To date there has been no such agreement or transaction prescribed by regulations.
- (4) The current category of Financial Agreements or Transactions is not, therefore, wide enough to cover all types of derivatives or transactions that are presently or which may in future be entered into in Malaysia. Accordingly, for such derivatives, close-out netting provisions in agreements relating to these derivatives may not be enforceable. Such derivatives arguably include (among others) equity derivatives, credit derivatives, inflation and weather derivatives. The current list of Financial Agreements or Transactions also does not cover the collateral (for credit enhancement purposes) in relation to these derivatives.

2.2 SECTION 27 AND THE THIRD SCHEDULE OF THE ACT

- (1) The appointment of a conservator pursuant to section 27 of the Act shall have the effect set out in the Third Schedule. Paragraph 4 of the Third Schedule of the Act provides that the appointment of a conservator shall not be regarded as giving rise to a right for any person to, inter alia, terminate, cancel or modify an agreement.
- (2) Paragraph 17(1) of the Third Schedule provides that upon the appointment by PIDM of a conservator over an affected person, a moratorium will come into effect. By paragraph 17(2) of the Third Schedule, the moratorium period is twelve months, subject to termination by PIDM at any time. PIDM may extend the moratorium for such period as PIDM deems fit, under paragraph 17(3) of the Third Schedule.

3. PROPOSALS

3.1 REGULATIONS IN RELATION TO SECTIONS 76 and 80 OF THE ACT

- (1) As the current category of Financial Agreements or Transactions is not wide enough to cover certain types of derivatives or transactions, it is proposed that regulations be passed pursuant to the powers conferred under sections 80(h) and 100 of the Act to expand the list of Financial Agreements or Transactions. This list would also include collateral agreements, such as the ISDA Credit Support Annexes, ISDA Credit Support Deed or ISDA Margin Provisions. Appendix 1 sets out the full list of these agreements and transactions which ISDA has proposed for inclusion as a Financial Agreement or Transaction.

- (2) The draft Malaysia Deposit Insurance Corporation (Financial Agreements or Transactions) Regulations 2007 to expand the list of Financial Agreements or Transactions are set out in Appendix 1.

Notwithstanding the issuance of the Regulations, PIDM would like to highlight that it proposes, when practicable, to amend the Act to reserve limited rights to PIDM to repudiate or transfer Financial Agreements or Transactions as follows.

3.2 PROVISIO: AMENDING THE ACT AT A LATER DATE

- (1) We propose, at a later stage, to amend the Act, so that (rather than excluding Financial Agreements or Transactions from the application of section 76 altogether) PIDM or the appointed person may have a reasonable time frame to determine whether or not the Financial Agreements or Transactions will be transferred to a solvent party or repudiated.
- (2) The rationale behind the proposed amendments is so that PIDM would have sufficient time to unwind the activities of the non-viable member institution, including its large portfolios of off-balance sheet futures, options, forwards and swap positions, in an orderly fashion with sufficiently small, if any, fire-sale losses that would not unduly disrupt financial markets nor cause doubts about the financial health of otherwise solvent banks.
- (3) The Federal Deposit Insurance Corporation of the United States (“FDIC”), for example, has similar powers, for similar reasons. As a receiver or conservator, the FDIC has “ ... a variety of statutory powers to assist it in resolving failing insured banks and thrifts in a manner that minimizes the costs to the deposit insurance funds as well as disruption to depositors and other customers. ... the new provisions carefully balance the importance of close-out netting for counterparties with the maintenance of market stability through a responsive resolution process and the reduction of losses for the deposit insurance funds. Title IX³ clarifies and strengthens the FDIC's powers to resolve the derivatives held by a failed insured bank or thrift by retaining valuable qualified financial contracts (“QFCs”) held by an institution in a conservatorship, selling or transferring QFCs to another financial institution or a FDIC-owned bridge bank, or terminating unneeded QFCs in a receivership. The FDIC's ability to retain the value in a derivatives portfolio and fashion a flexible resolution strategy could be a crucial element in limiting the potential market disruption from a bank's failure during a period of market instability.”⁴

³ Of the US Federal Deposit Insurance Corporation Improvement Act

⁴ “Adjusting the Rules: What Bankruptcy Reform Will Mean for Financial Market Contracts” October 11, 2005, by Michael Krimminger. Michael H. Krimminger is Manager for Policy Analysis in FDIC’s Division

- (4) PIDM has discussed the proposed approach with ISDA, and ISDA understands the rationale for the proposed amendment. ISDA has emphasized the importance of balancing this against the interests of counterparties, particularly as regards ensuring (i) that there be no “cherry-picking” so that the positions are either transferred or repudiated as a whole, and (ii) the timeliness of the determination by PIDM or the appointed person so that counterparties are able to exercise their close-out netting rights within a reasonable period instead of running open market risk.
- (5) PIDM will consult with experts and industry on the development of draft legislation, and will consult further with regulators and interested parties prior to the implementation of the proposed changes.

3.3 SECTION 27 AND THE THIRD SCHEDULE OF THE ACT

- (1) In relation to the provisions in the Third Schedule of the Act, PIDM proposes to issue a policy statement (“Policy Statement”), to immediately resolve the concerns of stakeholders and market participants. This Policy Statement sets out how PIDM will generally exercise its powers to approve the exercise of the close-out netting provisions in relation to the Financial Agreements or Transactions.
- (2) Nevertheless, the Policy Statement states that PIDM reserves its right to affirm or repudiate Financial Agreements or Transactions within a reasonable time in the circumstances set out in the Policy Statement. Appendix 2 sets out the Policy Statement.
- (3) The rationale for this reservation is to provide PIDM with sufficient time to unwind the activities of the affected person, including their portfolios of off-balance sheet futures, options, forwards and swap positions, in an orderly fashion with sufficiently small, if any, fire-sale losses.
- (4) PIDM has discussed the above proposal with ISDA, and ISDA understands the rationale for the reservation in the Policy Statement, but has again noted the importance of balancing this against the interests of counterparties.

4. RESPONSE

The views and comments of interested parties are sought in relation to the aforesaid issues and proposals.

of Resolutions and Receiverships. Note that the article is stated to reflect the views of the author and do not necessarily reflect the official position of the FDIC.

References:

“A Proposal for Efficiently Resolving Out-of-the-Money Swap Positions at Large Insolvent Banks” by George Kaufman, Loyola University Chicago and Federal Reserve Bank of Chicago.

“Derivatives and Systemic Risk, Netting, Collateral and Closeout” by Robert Bliss and George Kaufman, Federal Reserve Bank of Chicago, WO 2005-03.

“Adjusting the Rules: What Bankruptcy Reform Will Mean for Financial Market Contracts” by Michael Krimminger, October 11, 2005.

Appendix 1

MALAYSIA DEPOSIT INSURANCE CORPORATION ACT 2005

MALAYSIA DEPOSIT INSURANCE CORPORATION (FINANCIAL AGREEMENTS OR TRANSACTIONS) REGULATIONS 2007

IN exercise of the powers conferred by subsection 80(h) and section 100 of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642], the Corporation, with the approval of the Minister, makes the following Regulations:

Citation and commencement

1. (1) These Regulations may be cited as the **Malaysia Deposit Insurance Corporation (Financial Agreements or Transactions) Regulations 2007**.
- (2) These Regulations come into operation on [*] 2007.

Interpretation

2. In these Regulations, unless the context otherwise requires —

“collateral” means any of the following:

- (i) cash in any currency;
- (ii) securities of any kind, including (without limitation) debt and equity securities;
- (iii) guarantees, letters of credit and obligations to reimburse; and
- (iv) any asset commonly used as collateral in Malaysia;

“collateral arrangement” means any margin, collateral or security arrangement or other credit enhancement related to a netting agreement or one or more agreements or transactions referred to in section 80 (a) to (d) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642] or one or more prescribed financial agreements or transactions under Section 80(h) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642], including (without limitation):

- (i) a pledge or any other form of security interest in collateral, whether possessory or non-possessory;

- (ii) a title transfer collateral arrangement; and
- (iii) any guarantee, letter of credit or reimbursement obligation by or to a party to one or more agreements or transactions referred to in section 80 (a) to (d) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642] or one or more prescribed financial agreements or transactions under Section 80(h) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642], in respect of those agreements or transactions referred to in section 80 (a) to (d) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642] or the prescribed financial agreements or transactions under Section 80(h) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642];

“netting” means the occurrence of any or all of the following:

- (i) the termination, liquidation and/or acceleration of any payment or delivery obligations or entitlements under one or more agreements or transactions referred to in section 80 (a) to (d) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642] or one or more prescribed financial agreements or transactions under Section 80(h) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642] entered into under a netting agreement;
- (ii) the calculation or estimation of close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under (i);
- (iii) the conversion of any values calculated or estimated under (ii) into a single currency; and
- (iv) the determination of the net balance of the values calculated under (ii), as converted under (iii), whether by operation of set-off or otherwise;

“netting agreement” means (i) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more agreements or transactions referred to in section 80 (a) to (d) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642] or one or more prescribed financial agreements or transactions under Section 80(h) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642] entered into under the agreement by the parties to the agreement (a “master netting agreement”), (ii) any master agreement between two parties that provides for netting of the amounts due under two or more master netting

agreements (a “master-master netting agreement”) and (iii) any collateral arrangement related to one or more of the foregoing;

“party” means a person constituting one of the parties to a netting agreement;

“person” includes [individuals], [partnerships], [corporations], [other regulated entities such as banks, insurance companies and broker – dealers], [governmental units];

Prescribed Financial Agreements or Transactions

3. The following shall be deemed to be prescribed financial agreements or transactions for the purposes of section 80(h) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642]:

- (a) a basis swap;
- (b) a cap, collar or floor transaction;
- (c) a forward rate agreement;
- (d) a currency or interest rate future;
- (e) a currency or interest rate option;
- (f) an equity derivative, such as an equity or equity index swap, equity forward, equity option or equity index option;
- (g) a derivative relating to bonds or other debt securities or to a bond or debt security index, such as a bond option, a total return swap, index swap, forward, option or index option;
- (h) a credit derivative, such as a credit default swap, credit default basket swap, total return swap or credit default option;
- (i) an energy derivative, such as an electricity derivative, oil derivative, coal derivative or gas derivative;
- (j) a weather derivative, such as a weather swap or weather option;
- (k) a bandwidth derivative;
- (l) a freight derivative;
- (m) a carbon emission derivative;
- (n) an inflation derivative;
- (o) a spot, future, forward or other commodity transaction;
- (p) an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell-back agreement;
- (q) an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, commodities lending agreement or a commodities buy/sell-back agreement;
- (r) a collateral arrangement;
- (s) a property derivative;

- (t) a derivative transaction that is compliant with Shariah principles;
- (u) an agreement to clear or settle securities transactions or to act as depository for securities;
- (v) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (a) to u) and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction with respect to one or more reference items or indices relating to (without limitation) interest rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, precious metals, energy products, electricity, weather, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value;
- (w) any swap, forward, option, contract for differences or other derivatives in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) to (v) and in section 80(a) to (d) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642]*.

* [Note: the list to be further discussed and agreed with by Bank Negara Malaysia]

Made [] 2007
[PIDM/PN/**/2007; PN(PU*)***]

TAN SRI DATO' ABDUL AZIZ BIN HAJA TAHA
Chairman
Malaysia Deposit Insurance Corporation

[To be laid before the Dewan Rakyat pursuant to subsection 100(4) of the Malaysia Deposit Insurance Corporation Act 2005 [Act 642]]

Appendix 2



Perbadanan Insurans Deposit Malaysia
Malaysia Deposit Insurance Corporation

POLICY STATEMENT

CONSENT TO THE MUTUAL SET-OFF OF AMOUNTS DUE AND PAYABLE
UNDER OUTSTANDING TRANSACTIONS UNDER
ANY ELIGIBLE FINANCIAL AGREEMENTS OR TRANSACTIONS
BETWEEN AN 'AFFECTED PERSON' AND ANY OTHER PARTY

1. Paragraph 17(1) of the Third Schedule ("Schedule") to the Malaysia Deposit Insurance Corporation Act 2005 (Act 642, Malaysia) ("Act") provides that upon the appointment by Perbadanan Deposit Insurans Malaysia ("Corporation") of a conservator over an 'affected person' (as defined in s. 2 of the Act) a moratorium ("Moratorium") will come into effect. By paragraph 17(2) of the Schedule to the Act, the Moratorium period is twelve (12) months, subject to termination by the Corporation at any time. The Corporation may extend the Moratorium for such period as the Corporation deems fit, under paragraph 17(3) of the Schedule.
2. During the Moratorium, by reason of paragraph 17(1)(e)(iv) of the Schedule, *"no steps may be taken ... to set off any debt owing to the affected person in respect of any claim against the affected person, except with the prior written consent of the Corporation"*.

3. Subject to paragraphs 6 and 7 below, the Corporation will generally give its written consent to the set off of amounts due and payable under outstanding transactions under any eligible “Financial Agreements or Transactions” set out in paragraph 4 below between an ‘affected person’ and any other party.

4. The eligible ‘Financial Agreements or Transactions’ referred to in paragraph 3 of this Policy Statement are:
 - (a) a currency or interest rate swap agreement;
 - (b) a spot, future, forward or other foreign exchange agreement;
 - (c) a commodity swap;
 - (d) a repurchase agreement;
 - (e) a basis swap;
 - (f) a cap, collar or floor transaction;
 - (g) a forward rate agreement;
 - (h) a currency or interest rate future;
 - (i) a currency or interest rate option;
 - (j) an equity derivative, such as an equity or equity index swap, equity forward, equity option or equity index option;
 - (k) a derivative relating to bonds or other debt securities or to a bond or debt security index, such as a bond option, a total return swap, index swap, forward, option or index option;
 - (l) a credit derivative, such as a credit default swap, credit default basket swap, total return swap or credit default option;
 - (m) an energy derivative, such as an electricity derivative, oil derivative, coal derivative or gas derivative;
 - (n) a weather derivative, such as a weather swap or weather option;
 - (o) a bandwidth derivative;

- (p) a freight derivative;
- (q) a carbon emission derivative;
- (r) an inflation derivative;
- (s) a spot, future, forward or other commodity transaction;
- (t) an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell-back agreement;
- (u) an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell-back agreement;
- (v) a collateral arrangement;
- (w) a property derivative;
- (x) a derivative transaction that is compliant with Shariah principles;
- (y) an agreement to clear or settle securities transactions or to act as a depository for securities;
- (z) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (a) to (y) and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction with respect to one or more reference items or indices relating to (without limitation) interest rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, precious metals, energy products, electricity, weather, quantitative measures associated with an occurrence, extent of an occurrence, or contingency

associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

- (aa) any swap, forward, option, contract for differences or other derivatives in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) to (z)]*.

* [The entire list to be discussed with Bank Negara Malaysia for confirmation]

- 5. For the purposes of interpretation, in this Policy Statement, unless the context otherwise requires-

“collateral” means any of the following:

- (i) cash in any currency;
- (ii) securities of any kind, including (without limitation) debt and equity securities;
- (iii) guarantees, letters of credit and obligations to reimburse; and
- (iv) any asset commonly used as collateral in Malaysia;

“collateral arrangement” means any margin, collateral or security arrangement or other credit enhancement related to a netting agreement or one or more eligible Financial Agreements or Transactions entered into thereunder, including (without limitation):

- (i) a pledge or any other form of security interest in collateral, whether possessory or non possessory;

- (ii) a title transfer collateral arrangement; and
- (iii) any guarantee, letter of credit or reimbursement obligation by or to a party to one or more eligible Financial Agreements or Transactions, in respect of those eligible Financial Agreements or Transactions;

“netting” means the occurrence of any or all of the following:

- (i) the termination, liquidation and/or acceleration of any payment or delivery obligations or entitlements under one or more eligible Financial Agreements or Transactions entered into under a netting agreement;
- (ii) the calculation or estimation of close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under (i);
- (iii) the conversion of any values calculated or estimated under (ii) into a single currency; and
- (iv) the determination of the net balance of the values calculated under (ii), as converted under (iii), whether by operation of set-off or otherwise;

“netting agreement” means (i) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more eligible Financial Agreements or Transactions entered into

under the agreement by the parties to the agreement (a “master netting agreement”), (ii) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements (a “master-master netting agreement”) and (iii) any collateral arrangement related to one or more of the foregoing;

“party” means a person constituting one of the parties to an eligible Financial Agreement or Transaction;

“person” includes [individuals], [partnerships], [corporations], [other regulated entities such as banks, insurance companies and broker-dealers], [governmental units].

6. The Corporation reserves its right to affirm or repudiate any of the eligible Financial Agreements or Transactions within [a reasonable time]* after the appointment of the conservator if the Corporation determines that such affirmation, , disaffirmance or repudiation will promote the orderly administration of the affected person's affairs.

***[To be discussed with ISDA and others]**

7. In exercising the rights of disaffirmance or repudiation of an eligible Financial Agreement or Transaction to which the affected person is a party, the Corporation shall:

- (a) disaffirm or repudiate all eligible Financial Agreements or Transactions between:

- (i) any person or any person related to such person; and
- (ii) the affected person; or

