

ISDA

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BY HAND

The Bills Committee on the Companies (Corporate Rescue) Bill
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Attention: The Clerk to the Bills Committee for the Companies (Corporate Rescue) Bill

Dear Sirs,

THE COMPANIES (CORPORATE RESCUE) BILL

The International Swaps and Derivatives Association, Inc. ("**ISDA**") is pleased to submit this comment letter to the Bills Committee on the Companies (Corporate Rescue) Bill (the "**CCR Bill**") (the "**Bills Committee**") and the Financial Services Bureau to assist in the ongoing deliberations about the CCR Bill.

ISDA is an international organisation whose membership comprises over 550 of the world's largest commercial, merchant and investment banks, corporations, government entities and other institutions. ISDA's members represent a broad cross-section of the institutions that are dealers in and end-users of privately negotiated derivatives ("**over-the-counter**" or "**OTC**" derivatives) both in Hong Kong and world-wide. A current list of ISDA's members is available on its website at www.isda.org.

1. Introduction

First and foremost, ISDA welcomes the policy objectives of the CCR Bill in introducing a corporate rescue procedure which gives companies in financial difficulty the opportunity to try to recover, thus, amongst others, preserving valuable employment. In particular, ISDA is strongly supportive of the policy objectives of the provisions in the CCR Bill which exempt set-off under derivative contracts from the moratorium which is part of the corporate rescue procedure proposed in the CCR Bill. A party to a derivative contract in respect of whom a provisional supervisor has been appointed may well be in default under its derivative contract, either because the commencement of the moratorium

is treated as an insolvency event of default under the derivative contract or otherwise. ISDA acknowledges and agrees that the overriding policy concern supporting the different treatment of derivative contracts from other commercial transactions is the need to minimize systemic risk potentially arising from the insolvency or other default of a party to such contracts.

It is widely thought that systemic risk could be unacceptably high if market participants are unable to exercise contractual self-help remedies immediately upon the insolvency or other default of a counterparty to OTC derivative contracts. Such self-help remedies include the right to terminate, or close-out, all outstanding derivative contracts with the insolvent counterparty, net all payment obligations thereunder and foreclose on any collateral. Many OTC derivative transactions are entered into pursuant to a master agreement or other documentation, which provides for such self-help remedies. Following the termination of outstanding derivative transactions, the close-out amount, representing the lost value to one of the parties for terminating the transactions prior to their stated maturity, is calculated for each individual transaction. Such amounts are then netted against one another, so that a single net amount will be owed from one party to another. Netting arrangements, if enforceable, dramatically reduce the credit risks inherent in OTC derivative transactions, decreasing the risk that the insolvency of an institution could have systemic effects. Therefore, the importance of clarifying the enforceability of netting arrangements for OTC derivatives in the event of an insolvency cannot be overstated.

Similarly, if participants are unable to enforce their rights to terminate derivative transactions with an insolvent entity in a timely manner, and to offset or net payment and other transfer obligations and entitlements arising thereunder, the resulting uncertainty and potential lack of liquidity could increase the risk of an inter-market disruption. Consistency, predictability and enhanced protection in the case of insolvency are extremely important in the derivatives market. Any uncertainty could lead institutions to withhold payments, which could also lead to reduced liquidity, impair the capital markets and a lead to greater chance that a limited crisis will spread to other institutions and markets. Indeed, in the Legislative Council Brief to the CCR Bill, it was noted that "to impose a moratorium on such contracts could involve unravelling innumerable other contracts which would cause chaos in the market concerned".

Although ISDA is pleased that the CCR Bill makes progress towards clarifying and enhancing the validity of close-out, termination and netting provisions, ISDA is concerned that the proposals outlined in Section 11 of the CCR Bill together with the list of contracts in Schedule 5 of the CCR Bill may not be sufficiently comprehensive to prevent the very systemic risk which the Bill is trying to avoid. In particular, ISDA members are concerned that:

- The list of derivative contracts in Schedule 5 may not be representative of the derivative contracts which are currently available in the market and should be expanded.
- This list should be prospective and take into account future developments in the derivatives market.
- The exception which deals with set off in respect of master agreements should be further clarified.
- It is not clear whether cross-product set-off is permitted.
- Set-off should be allowed in respect of "title transfer" collateral arrangements.
- Exception to the moratorium should also be made to security and other collateral arrangements entered into in respect of derivative transactions.

- The exception to the moratorium which deals with guarantees should be clarified.

2. List of derivative transactions in Schedule 5

List of derivative contracts not representative of the market

Section 11 of the Bill provides that during a moratorium, there will be a stay of all proceedings, including set-off, against the company except with the consent of the provisional liquidator of the company. Section 11(3) provides that contracts listed in Schedule 5 are, however, exempt from the application of this moratorium. Thus, the counterparty to a Schedule 5 derivative contract should be able to exercise contractual self-help including netting. ISDA supports the efforts of the draftsman of the CCR Bill to provide, in Schedule 5, a comprehensive and flexible list of significant derivative transactions which reflects market practice. However, if this list approach is to be followed, ISDA believes that the list of derivative transactions in Schedule 5 of the Bill is not representative of all significant derivatives activities in the market. For example, this list does not include credit derivatives and bond option transactions and should include a wider range of commodity derivatives (as opposed to only commodity swaps) and a more comprehensive list of equity derivative transactions.

ISDA notes that the list in Schedule 5 is based on the list of "eligible financial contracts" in the Canadian Bankruptcy and Insolvency Act 1992. Though this list of derivatives contracts may have been sufficient at the time of being drafted, the derivatives market is a fluid and evolving one and this list may not be a wholly appropriate model at the present time. The Canadian provisions are very similar to those of Chapter 11 of the United States Bankruptcy Code which also contains a similar exemption from the mandatory stay of the code for certain financial contracts, including "swap agreements".

The definition of "swap agreements" in §101 of Chapter 11 of the United States Bankruptcy Code is set out for ease of reference in Appendix A. It is to be noted that the range of derivative contracts covered is broadly similar to that covered in the CCR Bill.

ISDA further notes that there are on-going proposals in the United States to amend existing bankruptcy legislation, including to expand the definition of swap agreement by way of the Financial Contract Netting Improvement Act of 2001 the ("FCNIA"), which is currently still draft legislation before subcommittees of the United States House of Congress. The amended definition of swap agreement includes a broader array of derivatives contracts, including equity indices and equity swaps, debt indices or debt swaps and credit derivatives. This definition is set out for ease of reference in Appendix B. The FCNIA has been strongly supported by the Administration and industry participants as enhancing market stability and being critical to systemic risk reduction.

ISDA suggests that the definition of "**Specified Transaction**" used in the 1992 ISDA Master Agreement (Multicurrency-Cross Border) can also be used as a model to expand the list of derivative transactions in Schedule 5. This definition has recently been updated and is set out in Attachment 7 to a form of Amendment to ISDA Master Agreements (the "**Amendment**"), published in October 2001. This definition is set out for ease of reference in Appendix C and clause (i) of this definition contains a list of derivative transactions.

This definition of Specified Transaction along with the rest of the Amendment was formulated as the result of a review and analysis of certain provisions of the ISDA Master Agreements which ISDA began undertaking in late 1999. This process took into account the recommendations on documentation contained in the June 1999 report of the Counterparty Risk Management Policy Group

entitled "Improving Counterparty Risk Management Practices" (the "CRMPG Report") and the experiences of ISDA's members (both dealers and end-users) since publication of the ISDA Master Agreements in 1992.

At present, parties can incorporate the updated definition of "**Specified Transaction**" into their ISDA Master Agreements on a bilateral basis. At the same time that the Amendment was published, ISDA members decided to proceed with the preparation of a new ISDA Master Agreement. The updated definition of "**Specified Transaction**" is expected to be included in the new master agreement which is expected to be published in late 2002.

Is the Schedule 5 list of derivative contracts sufficiently prospective and does it take into account future developments in the derivatives market?

Paragraph 10 of Schedule 5 states that set-off is permitted in respect of a "derivative, combination or option in respect of, or agreement similar to, an agreement or contract referred to in any of items 1 to 9". ISDA welcomes the policy intention of this approach, which is designed to provide flexibility so as to avoid the need to amend the definition as the nature and uses of derivatives transactions evolve.

However, ISDA believes that Paragraph 10 is not sufficiently clear-cut in its application and, for example, "or agreement similar to" may be construed more narrowly than intended. ISDA believes that the proposed definition should provide additional legal certainty by defining further this phrase, thus reducing legal risk.

The United States Bankruptcy Code currently uses the words "or other similar agreement". The FCNIA expands on this, for example, in paragraph (ii) of the definition of "swap agreement" (as set out in Appendix B). This provides for an exemption from the stay for:

" any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that

- (I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and
- (II) is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value."

Again, ISDA believes the language set out in clause (ii) of the definition of Specified Transaction as set out in Appendix C can also be an appropriate model.

This refers to any transaction:

"which is a type of transaction that is similar to any transaction referred to in clause (i) that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value, (b) any combination of these transactions and.....".

Thus, the list of Schedule 5 contracts firstly, will not be limited to those expressly named in Schedule 5 and, secondly, will be prospective, anticipating future developments in the derivatives market.

The exception to the moratorium which deals with set-off in respect of Master Agreements should be clarified

Paragraph 11 of Schedule 5 has the effect of allowing set-off in respect of master agreements for derivative transactions. ISDA welcomes this approach as protecting the right to net payment obligations across different categories of derivative contracts.

ISDA is of the view that it is not entirely clear whether, if parties were to use such master agreements to document non-derivative transactions, this would "taint" the right to set off in respect of derivative transactions which is preserved under the CCR Bill. For example, assume a counterparty enters into a currency swap agreement, which is a Schedule 5 contract, and a weather derivative which is not. The ISDA Master Agreement provides that all transactions there under constitute "a single agreement". The question is whether this master agreement is a single protected currency swap agreement or a single potentially unprotected weather derivative agreement. For the sake of clarity, ISDA proposes that whether a master agreement is a Schedule 5 contract should be "without regard to whether the master agreement provides for an agreement or contract which is not an agreement or contract which is not an agreement or contract referred to in any of items 1 to [10]". This will make it clear that a master agreement within Schedule 5 will be treated as such even if it documents transactions that are not within Schedule 5.

The FCNIA allows netting in respect of "master netting agreements" and provides that if a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement is deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of the paragraphs (1) through (5) of section 561(a).

Is cross-product netting permitted?

Schedule 5 lists derivative transactions in respect of which netting is permitted but is silent in respect of cross-product netting. For example, say Party A and Party B have entered into, between them, (i) a basis swap which is in-the-money to the value of \$10 to Party A; and (ii) a floor transaction which is in-the-money to the value of \$10 to Party B. Both transactions are terminated on the same date. The parties have not entered into a derivatives master agreement. It is unclear whether, under the CCR Bill as currently drafted, both Party A and Party B would have to pay \$10 to each other following close-out or whether the parties can set off both sums resulting in no net flow of money.

The FCNIA adds a new section 561 to the Bankruptcy Code to make it clear that cross-product netting is permitted. Sub-section (a) provides:

"(a) In General. Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts or other transfer obligations arising under or in connection with 1 or more (or the termination, liquidation, or acceleration of 1 or more)

- (1) securities contracts, as defined in section 741(7);
- (2) commodity contracts, as defined in section 761(4);
- (3) forward contracts;
- (4) repurchase agreements;

- (5) swap agreements; or
- (6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title."

Collateral

As previously mentioned, the parties to OTC derivative transactions often build in risk reduction techniques such as close-out and netting provisions. Collateralisation is another means of mitigating risk. There are two principal forms of collateral arrangement used in the OTC derivatives market; one based on the creation of a security interest (which will be discussed more fully below); the other based on title transfer.

Title Transfer

Under title transfer, the collateral giver transfers full title in securities and/or cash to the taker and grants the taker the right to set off on default of the collateral giver, the taker's net exposure to the collateral giver under the derivative transaction against the value of the transferred securities and/or cash. Under this approach, the collateral taker owns the collateral, without restriction, and the collateral giver, if it performs in full, is only entitled to the return of securities and/or repayment of cash in the same currency.

For example, take a derivative transaction between Party A and Party B, both of which are Hong Kong corporates. Party A gives collateral of \$10 to Party B using the title transfer approach. Party A is put under a moratorium and an insolvency event of default thus occurs under the derivative transaction which allows Party B to close out the derivative transaction. If the derivative transaction is in-the-money to the value of \$6 to Party A, the derivative contract will allow Party B to net this against the value of the collateral. Thus, Party B will only have an obligation to return \$4 to Party A.

Credit enhancement by title transfer is an intrinsic part of the arrangements between the parties and a means of reducing credit risk. There is an argument that set-off in respect of such arrangements and derivative transactions between the parties is already permitted under the present drafting of the CCR Bill. Paragraph 11 of Schedule 5 contemplates that set-off under master agreements between the parties is permitted. Title transfer arrangements are usually part of such a master agreement. However, as this conclusion is not beyond doubt, ISDA is of the view that set-off arising out of title transfer arrangements should be expressly permitted as part of Schedule 5.

Security interest

Derivative contracts are often collateralised to reduce exposure. Foreclosing on collateral is a self-help remedy as intrinsic to a derivative transaction as close-out and netting. The ability of a market participant to enforce a security interest to satisfy a claim against an insolvent counterparty without delay is important not only to reduce credit risk, but also to maintain liquidity in the securities markets and prevent systemic risk. A stay against the liquidation of securities can result in uncertainty and the potential inability of a party to finance the securities it has purchased or that have been pledged to it, which could result in gridlock and a chain of insolvencies.

ISDA is of the view that the present drafting leaves room for uncertainty as to whether the protection for set-off rights in respect of Schedule 5 derivative contracts extends to the exercise of rights under

related security arrangements. Indeed, during a moratorium, section 11(2)(d) of the CCR Bill provides that no steps may be taken to enforce any security interest over the company's property. This seems to be out-of-step with the position in Canada and in the United States.

In Canada, the Canadian Bankruptcy and Insolvency Act 1992 allows secured creditors to enforce their security held against the debtor subject to the stay in accordance with any applicable security agreement and pursuant to relevant security legislation.

In respect of swap agreements, §362(7) of the United States Bankruptcy Code contemplates that set-off will be permitted in respect of "any claim against the debtor (i.e. - the party subject to the stay) for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities or other property of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement", thus allowing set-off in respect of security arrangements.

Sub-paragraph (B) of the proposed definition of "swap agreement" in the FCNIA expands on this to expressly include "any security agreement or arrangement or other credit enhancement" related to swap agreements (see Appendix B).

To address this concern, ISDA believes that a carve-out should be made in the CCR Bill to the prohibition of set-off during a moratorium to allow enforcement of security interests in respect of Schedule 5 derivative transactions.

Guarantees

Paragraph 12 of Schedule 5 allows set-off under guarantees for the listed derivative transactions and master agreements in respect thereof. As a guarantee, along with collateral and netting provisions, are part of the credit support structure of the parties to a derivative contract, ISDA welcomes such provisions. However, similar points can be made in respect of this Paragraph 12 of Schedule 5 as are set out in the section headed "Master Agreement" above. That is, it is unclear whether set-off in respect of a guarantee is permitted if the guarantee guarantees Schedule 5 contracts as well as non-Schedule 5 contracts.

Clarification requested

ISDA would be grateful if the Financial Services Bureau or the draftsman of the CCR Bill would provide clarification of the following: Paragraph 9 of Schedule 5 refers to an agreement "to clear or settle securities transactions or futures contracts or to act as depository for securities". It is currently not clear what such agreements are and further clarification of the intention of this language would be welcome.

3. Conclusion

ISDA fully supports the objectives of the CCR Bill in introducing a moratorium period in which companies in financial difficulty are given protection from creditors' actions. However, ISDA believes that it is important that any amendments to existing legislation reflect current market practice related to the derivatives market and provide sufficient flexibility for future developments. ISDA strongly believes that the provisions in this bill represent a valuable opportunity to take tangible steps to mitigate systemic risk and improve the integrity of the financial system.

ISDA International Swaps and Derivatives Association, Inc.

ISDA is grateful for the opportunity to comment on the proposed amendments to the Ordinance and would be pleased to discuss the issues addressed above in further detail or otherwise assist in any way that the Bills Committee and/or the Financial Services Bureau deems appropriate.

Yours sincerely,



Angela Papesch
Head of Asia-Pacific Office

c.c. Financial Services Bureau
18th Floor, Tower 1
Admiralty Centre
Harcourt Road
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Attention: The Secretary to the Financial Services Bureau

Appendix A

Swap Agreement

U.S.C. §101

"Swap agreement" means

- (A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);
- (B) any combination of the foregoing; or
- (C) a master agreement for any of the foregoing together with all supplements.

§362 also exempts from the mandatory stay commodity contracts, forward contracts, securities contracts and repurchase contracts. For completeness, the definitions of such terms are set out below:

Commodity contract

U.S.C. §761

"commodity contract" means:

- (A) with respect to a futures commission merchant contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;
- (B) with respect to a foreign futures commission merchant, foreign future;
- (C) with respect to a leverage transaction merchant, leverage transaction;
- (D) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; or
- (E) with respect to a commodity options dealer, commodity option.

Forward contract

U.S.C. §101

"Forward contract" means a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward

contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, action, unallocated transaction, or any combination thereof or option thereon.

Securities contract

U.S.C. §741

"Securities contract" means a contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating in foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency.

Repurchase agreement

U.S.C. §101

"Repurchase agreement" (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

Appendix B

Financial Contract Netting Improvement Act of 2001, section 8(E)

Swap Agreement

"swap agreement"

- (A) means
- (i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or an equity swap, option, future, or forward agreement; a debt index or a debt swap, option, future, or forward agreement; a credit spread or a credit swap, option, future, or forward agreement; a commodity index or a commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;
 - (ii) any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that
 - (I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and
 - (II) is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;
 - (iii) any combination of agreements or transactions referred to in this paragraph;
 - (iv) any option to enter into an agreement or transaction referred to in this paragraph;
 - (v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or
- (B) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (A), but not to exceed the actual value of such contract on the date of the filing of the petition; and
- (C) is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations

prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission."

Amendments have also been proposed in the FCNIA to the definitions of forward contract, repurchase contract, commodity contract and securities contract; for completeness, such proposed amendments and/or definitions are set out below:

Forward contract

To the definition of "forward contract", the following amendments are made:

- (A) in paragraph (25)
 - (i) by striking "means a contract" and inserting "means "(A) a contract";
 - (ii) by striking ", or any combination thereof or option thereon;" and inserting ", or any other similar agreement;"; and
 - (iii) by adding at the end the following:
- (B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);
- (C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);
- (D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B) or (C); or
- (E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract on the date of the filing of the petition;";
- (F) in paragraph (46), by striking "on any day during the period beginning 90 days before the date of" and inserting "at any time before".

Repurchase Agreement

- (47) "repurchase agreement" (which definition also applies to a "reverse repurchase agreement")
 - (A) means
 - (i) an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities, or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United

States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, loans, or interests of the kind described above, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

- (ii) any combination of agreements or transactions referred to in clauses (i) and (iii);
- (iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);
- (iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or
- (v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and
- (B) does not include a repurchase obligation under a participation in a commercial mortgage loan, and, for purposes of this paragraph, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development.

Commodity contract

To the definition of "commodity contract", the following amendments are made:

- (A) by striking "or" at the end of subparagraph (D); and
- (B) by adding at the end the following:
- (F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;
- (G) any combination of the agreements or transactions referred to in this paragraph;
- (H) any option to enter into an agreement or transaction referred to in this paragraph;
- (I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

- (J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition.

Securities contract

"securities contract"

- (A) means
- (i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;
 - (ii) any option entered into on a national securities exchange relating to foreign currencies;
 - (iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;
 - (iv) any margin loan;
 - (v) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;
 - (vi) any combination of the agreements or transactions referred to in this paragraph;
 - (vii) any option to enter into any agreement or transaction referred to in this paragraph;
 - (viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this paragraph, except that such master agreement shall be considered to be a securities contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or
 - (ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and
- (B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan.

Appendix C

Amendment to ISDA Master Agreements, Attachment 7

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.