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ISDA Master Agreements Close-Out Netting Update

Dear Sirs,

We refer to your letter of 11 September 2006 and our memorandum of law on the validity and enforceability of close-out netting under the ISDA Master Agreements, dated 4 February 2004 (the "**Restated Opinion**") as amended on 3 November 2004 (the "**2004 Update**") and on 12 October 2005 (the "**2005 Update**"; together with the 2004 Update and the Restated Opinion the "**Opinion**").

Terms that are defined in the Opinion and that are not otherwise defined herein shall have the meaning given to them in the Opinion. The assumptions, limitations and qualifications made in the Opinion apply mutatis mutandis to this update opinion (the "**2006 Update**").

We have been asked to review any and all recent developments (such as legislation, court decisions, administrative rulings or official interpretations) since 12 October 2005 that could materially and adversely affect the conclusions reached in the Opinion.

1. Update Opinion

- 1.1 We can confirm that, subject to what is stated at 2. below in respect of Credit Protection Transactions, Credit Protection Transactions on Asset-Backed Securities and Total Return Swaps (each such term as defined at Appendix A) (together hereinafter referred to as "**Credit Derivative Transactions**"), at 3. below in respect of certain spot transactions and at 4. below in respect of Transactions with Austrian Insurance Undertakings,

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there are no developments that would adversely affect the conclusions set forth in the Opinion as they relate to the 1987, 1992 and the 2002 ISDA Master Agreements and (other than as set out below) there are no developments pending as a result of which the current regulatory or legal environment of Austria regarding the enforceability of close-out netting is expected to be changed in the foreseeable future.

- 1.2 Subject to the **limitations** set out at 2. and 3. below, we can confirm that our Opinion also applies to the Transactions as set forth in Appendix A dated September 2006 as attached to this 2006 Update.

Effective as of 1 January 2007, Annex 2 to § 22 BWG (see 2.2.2.1.2.1 of the Restated Opinion and 1.2 of the 2005 Update) will be amended to expressly include certain derivative instruments as set out in Annex 1 Section C no 10 of Directive 2004/39/EC ("**MiFID**"). A revised translation of Annex 2 to § 22 BWG is attached to this 2006 Update. The relevant instruments are "options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or an MTF, are cleared and settled through recognized clearing houses or are subject to regular margin calls". In respect of cash settled (including at the option of one of the parties) Weather Index Transactions, Freight Transactions, Emissions Allowance Transactions and Economic Statistics Transactions, the legislator finally clarifies that these transactions benefit from § 20 (4) KO and § 20 (3) AO. Physically settled Emission Allowance Transactions would qualify as commodities contracts pursuant to no 5 of Annex 2 to § 22 BWG.

2. Credit Derivative Transactions

- 2.1 In respect of Credit Derivative Transactions, the scarce Austrian legal writing that is available on this subject to date is not entirely consistent if they (until 31 December 2006) qualify for purposes of Annex 2 to § 22 BWG and thus § 20 (4) KO (see, *inter alia*, section 2.2.2.1.2.1 of the Restated Opinion) and § 20 (3) AO (see, *inter alia*, section 2.2.2.1.2.2 of the Restated Opinion).
- 2.2 With effect as of **1 January 2007**, Credit Derivative Transactions will be expressly set out in **Annex 1** item 1 (k) to § 22 BWG and thus there will **no** longer be room for arguing that they qualify for purposes of **§ 20 (4) KO** and **§ 20 (3) KO** as transactions listed in Annex 2 to § 22 BWG.

This is relevant if the enforceability of close-out netting is governed by **Austrian substantive insolvency law**, i.e. if the **Provisions on Netting Agreements (§ 233 KO**

and **§ 81 I BWG** (see below)) do not apply or if the netting agreement is subject to Austrian law.

2.3 § 233 KO and § 81 I BWG apply to:

- (i) **bankruptcy proceedings** and **composition proceedings** opened in Austria against the assets of **corporations**;
- (ii) **bankruptcy proceedings** opened in Austria against the assets of **insurance undertakings**; and
- (iii) **bankruptcy proceedings** and **special receivership proceedings** opened in Austria against the assets of a **bank** as well as **regulatory measures** pursuant to § 70 BWG instituted against a **bank**;

provided that the above mentioned insolvency proceedings and reorganization measures have a **cross-border effect**. In our view this condition should be met in relation to ISDA Master Agreements between an Austrian Corporation, an Austrian Bank or an Austrian Insurance Undertaking and a **non-Austrian counterparty**.

If the Provisions on Netting Agreements apply, **enforceability** of post-insolvency close-out netting will be determined under the **laws governing** the relevant **ISDA Master Agreement** (see 2.2.2.1.1 of the Restated Opinion).

- ### 2.4
- Where **Austrian substantive insolvency law** applies with respect to close-out netting, i.e. beyond the scope of application of the Provisions on Netting Agreements or in the event that the ISDA Master Agreements were governed by Austrian law, it is not certain whether close-out netting is enforceable in respect of Credit Derivative Transactions. The legal situation at best (see below) corresponds to the legal situation pre-1997, when enforceability essentially depended on whether one came to the conclusion that the **claims to be netted** have **vested prior** to or **after** the **initiation** of bankruptcy (or, of relevance in respect of Austrian Corporations only, judicial composition) proceedings. This has convincingly been advocated in legal writing at that time, but has not been confirmed by case law. The lack of available case law on this point is likely due to the fact that, with effect of 1 January 1997, the netting privileges set out in § 20 (4) KO and § 20 (3) AO were introduced.

Historically, it appears that § 20 (4) KO and § 20 (3) AO are primarily inspired by prudential considerations for solvency purposes. So as to ensure **supervisory recognition** of contractual netting as provided by Directive 96/10/EC, the Austrian legislator, by way of an amendment to the KO and AO provided for an express permission of post-insolvency set-off (including netting) in respect of, *inter alia*, the off balance-sheet items (derivatives) as mentioned in Annex 2 to § 22 BWG. Annex 2 to § 22 BWG corresponds to Annex III to Directive 89/674/EC, consolidated under Annex IV to Directive 2000/12/EC / Annex IV to Directive 2006/48/EC. In this context, the explanatory mate-

rials to § 20 (4) KO and § 20 (3) AO (*ErläutRV zu Art V 369 BlgNR 20. GP*) point out that in order for netting agreements to be recognized in the insolvency of the Austrian counterparty, amendments to the KO and AO were required. With reference to case law that denied the set-off of claims and obligations that arise upon the opening of bankruptcy proceedings (*mit Eröffnung des Konkursverfahrens*), the explanatory materials point out that, in order to avoid the need to determine whether the claims to be netted have vested prior to or after the initiation of the relevant proceedings, set-off is expressly permitted (if so agreed) with respect to claims and obligations under contractual netting agreements. Based on this statement one could argue that the legislator wanted to permit set-off in respect of contractual netting agreements generally, irrespective of the underlying transactions.

However, taking into account that the explanatory materials (and the texts of § 20 (4) KO and § 20 (3) AO) expressly refer to specific transactions (which are generally susceptible of contractual netting under the solvency framework), we believe that the better view is that the netting privileges set out in § 20 (4) KO and § 20 (3) AO apply only to the transactions expressly mentioned therein.

Following this view and considering the fact that certain transactions since 1 January 1997 benefit from the netting privileges set out at § 20 (4) KO and § 20 (3) AO, while others (including, as of 1 January 2007, Credit Derivative Transactions) do not benefit from these, we believe that the safer position would be not to rely on the enforceability of post-**bankruptcy** close-out netting of claims under Credit Derivative Transactions, if **Austrian substantive insolvency law** applies (see above).

In respect of **judicial composition proceedings** (applicable to Austrian Corporations but not Austrian Banks and Austrian Insurance Undertakings), § 20 e (2) AO (see 2.2.2.1.2.2 of the Restated Opinion) would **prevent** the **termination** of Credit Derivative Transactions (if the opening of judicial composition proceedings were the only Event of Default or Termination Event).

- 2.5 The new legislative framework on the prudential regime applicable to contractual netting of derivative transactions is set out in Directive 2006/48/EC and Austrian implementing legislation in force as of 1 January 2007 (§ 22 (2), (5) and (7) BWG and Annex 1 to § 22 item 1 (k) BWG; Part 5 Chapter 6 of the Solvency Regulation (*Solvabilitätsverordnung – SolvaVO*) adopted by the Austrian Financial Market Authority). In terms of solvency requirements, the new legal regime no longer seems to provide for contractual netting of claims and obligations under Credit Derivative Transactions.

It remains unclear, however, if it is the intention of the Austrian legislator to exclude Credit Derivative Transactions from the netting privileges available under § 20 (4) KO and § 20 (3) AO (leaving aside considerations of prudential supervision). In this respect it should be noted that § 20 (4) KO and § 20 (3) AO, from the outset (and without being induced by the above referred Community legislation), include certain instruments falling within Annex 1 to § 22 BWG (corresponding to Annex I of Directive 89/647/EC,

consolidated under Annex II to Directive 2000/12/EC / Annex II to Directive 2006/48/EC) such as certain repo-style transactions. It may therefore be assumed that **practical considerations** related to contractual netting and netting agreements apply to § 20 (4) KO and § 20 (3) AO so that supervisory treatment and privileged post-insolvency set-off/close-out netting in the event of bankruptcy do not need to fully converge in all events.

It is our view that, when implementing Directive 2006/48/EC, Credit Derivative Transactions have unintentionally been excluded from the netting privileges pursuant to § 20 (4) KO and § 20 (3) AO. However, pending legislative action in this respect (see at 2.6), we are of the opinion that there is a **certain risk** that post-insolvency close-out netting will **not be enforceable** in respect of **Credit Derivative Transactions** if **Austrian substantive insolvency law** applies (see above).

- 2.6 As advised in our letter to, *inter alios*, ISDA of 18 October 2006, we have discussed the above concerns and the **need for legislative changes** in § 20 (4) KO and § 20 (3) AO with the Austrian Ministry of Justice on 16 October 2006. Also, we have advised the *Bundessparte Bank und Versicherung* of *Wirtschaftskammer Österreich*, which is the supreme organization of credit institutions and insurance undertakings in Austria of this issue. Following the latter's initiative the Austrian Ministry of Finance and the Austrian Ministry of Justice have indicated their willingness to take legislative action by amending the BWG and/or the KO/AO. As at the date of this 2006 Update, it appears likely that such amendments will not be introduced in 2006 but in early 2007 (possibly with retroactive effect as of 1 January 2007).

3. Spot Transactions

In respect of Transactions entered into on a "spot" basis¹, there is a risk that they will (absent elements of optionality or other derivative-like characteristics) **not** be included in Annex 2 to § 22 BWG and/or § 20 (4) KO (see, *inter alia*, section 2.2.2.1.2.1 of the Restated Opinion) and § 20 (3) AO (see, *inter alia*, section 2.2.2.1.2.2 of the Restated Opinion) either, irrespective of the underlying.

4. Recent Developments re Austrian Insurance Undertakings

- 4.1 With effect as of 1 January 2007, Austrian Insurance Undertakings will (under certain conditions) be allowed to use **rights under derivative financial instruments**, which are entered into for the sole purpose of hedging specific assets or a pool of assets against fluctuations in value (*Wertänderungen*), as cover for the actuarial reserve fund (*zur Bedeckung der versicherungstechnischen Rückstellungen*) (§ 2 (1) no 8 of the Ordinance on Asset Allocation (*Kapitalanlageverordnung 2002 – KapAnlVO*) of the Aus-

¹ Customarily, these are transactions where settlement occurs at the latest two banking days after the trade date; this also concurs with the definition of spot contract in Art 38 (2) of Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing MiFID.

trian regulator FMA). It follows from this (by virtue of § 21 (1) icw § 78 (3) Insurance Supervision Act (*Versicherungsaufsichtsgesetz – VAG*)) that such rights should be eligible to be allocated to the **reserve fund** (*Deckungsstock*) that has to be kept for certain insurance businesses (e.g. life insurance) and thus should also be eligible for **registration** in the reserve fund register (*Deckungsstockregister*) to be maintained by the respective Austrian Insurance Company.

- 4.2 Pursuant to § 87 (1) VAG execution can be levied against assets registered in the reserve fund register only for the benefit (*zugunsten*) of an **insurance claim** (*Versicherungsforderung*) (as defined in the VAG; not including claims under derivative transactions) for which a reserve fund requirement (*Deckungserfordernis*) exists. Subject to certain exemptions (see 4.3 below), assets that are not subject to execution are also **excluded from set-off** (§ 293 (3) of the Austrian Execution Code (*Exekutionsordnung – EO*)).
- 4.3 In relation to claims that are in principle excluded from execution (and, consequently, set-off), § 293 (3) EO sets out that set-off against such claims is permissible *inter alia* for **collecting a legally connective counterclaim** (*zur Einbringung einer im rechtlichen Zusammenhang stehenden Gegenforderung*). Pursuant to Austrian case law and legal writing, the requirement that counterclaims be legally connective has to be construed narrowly. However, pursuant to legal writing, a set-off should e.g. be permissible if the claim and the counter-claim to be set-off derive from a unitary agreement (*einheitlicher Vertrag*) (*Oberhammer in Angst, EO § 293 Rz 7*).

We are of the opinion that an Austrian court should recognize the parties' agreement in Section 1 (c) of the ISDA Master Agreements that the Master Agreement and all Confirmations entered into thereunder form a single agreement.

It follows from this that good arguments can be made that the inclusion of a Transaction (the Austrian Insurance Undertaking's rights thereunder respectively) in the reserve fund and its registration with the reserve fund register would not *per se* adversely affect the enforceability of the close-out netting provisions of the ISDA Master Agreements.

- 4.4 In our opinion it will, however, not be possible to net payment and delivery obligations that relate to a particular reserve fund and are registered in the respective reserve fund register with / against obligations that do not relate to a reserve fund or that relate to another reserve fund (even of the same Austrian Insurance Undertaking), i.e. **no (close-out) netting across reserve funds**.
- 4.5 In case of bankruptcy proceedings the assets allocated to a reserve fund constitute a **separate fund** (*Sondermasse*) according to § 48 KO. **Insurance claims** (*Versicherungsforderungen*) (as defined in the VAG; not including claims under derivative transactions) will be satisfied preferentially out of the assets allocated to the separate fund. These claims will thus have **priority** over the hedge counterparty's claim to re-

ceive an Early Termination Amount (under the 2002 ISDA Master Agreement) or to receive the amount payable in respect of an Early Termination Date (under the 1992 ISDA Master Agreement).

5. Limitations and Qualifications

The purpose of the Opinion as amended by this 2006 Update is to provide guidance to ISDA and its members in understanding the issues that may be of relevance as a matter of Austrian law and to satisfy the opinion requirements set forth by the Basle Committee on Banking Supervision of the Bank for International Settlements effective as of 15 July 1994, concerning the recognition of close-out netting for capital purposes. The Opinion as amended by this 2006 Update shall not be relied upon by any person with respect to, or in connection with, any specific transaction or act undertaken or omitted to be undertaken.

In the Opinion as amended by this 2006 Update Austrian legal concepts are expressed in English terms and not in the original Austrian terms. The concepts concerned may not be identical to the concepts described by the same English term, as they exist under the laws of any other jurisdiction. The Opinion as amended by this 2006 Update may thus only be relied upon under the express conditions that (i) any issues of interpretation or liability arising hereunder will be governed by the laws of Austria and as interpreted by Austrian courts and (ii) the courts competent for the first district of Vienna are to have exclusive jurisdiction in respect of all disputes which may arise out of or in connection with the Opinion as amended by this 2006 Update.

Little to no legal writing or court rulings are available on the opinions expressed in the Opinion as amended by this 2006 Update. While we believe that the opinions expressed are well founded and justifiable, we cannot exclude that an Austrian court or administrative authority would take views that deviate from the opinions expressed in the Opinion as amended by this 2006 Update.

The Opinion as amended by this 2006 Update is solely given in connection with the ISDA Master Agreements and is limited to the opinions explicitly expressed herein and shall not be construed to express an implied opinion on any other matters in connection with the ISDA Master Agreements.

The Opinion as amended by this 2006 Update is rendered only to ISDA and is for the benefit of ISDA and its members in connection with the 1987, 1992 and 2002 ISDA Master Agreements (as defined in the Opinion) only. It may not be relied upon by any other person, firm or corporation for any purpose without our prior written consent.

Yours faithfully,


Schönherr Rechtsanwälte GmbH

Annex 2 to § 22 Banking Act (*Bankwesengesetz – BWG*) reads (in unofficial English translation) as follows:

Derivatives

1. *Interest rate derivatives*
 - a) *interest rate swaps (in one single currency);*
 - b) *floating/floating interest rate swaps (basis swaps);*
 - c) *forward rate agreements, including purchases of forward forward deposits;*
 - d) *interest rate futures and interest related index contracts;*
 - e) *options purchased on interest based instruments;*
 - f) *other contracts of a similar nature.*
2. *Foreign exchange rate derivatives and contracts concerning gold*
 - a) *cross currency interest rate swaps;*
 - b) *forward foreign exchange contracts;*
 - c) *currency futures and currency related index contracts;*
 - d) *currency options purchased;*
 - e) *contracts concerning gold and other contracts similar to those referred to in Nos. a through d.*
3. *Contracts concerning equities and other securities related contracts (unless already included in No 1)*
 - a) *forward transactions in equities and other securities price related forward transactions;*
 - b) *index contracts in equities and other securities price related index futures;*
 - c) *options purchased in equities and other securities index options;*
 - d) *other contracts of a similar nature concerning equities and other securities.*
4. *Precious metal contracts not including contracts concerning gold referred to in No 2 (e)*
 - a) *precious metal forward transactions;*
 - b) *precious metal futures;*
 - c) *precious metal options purchased;*
 - d) *other precious metal contracts of a similar nature.*
5. *Commodities contracts not including contracts concerning precious metals*
 - a) *commodities forward transactions;*
 - b) *commodities futures;*
 - c) *commodities options purchased;*
 - d) *other commodities related contracts of a similar nature.*
6. *Other forward transactions, futures, options purchased and similar transactions not attributable to those referred to in Nos. 1 through 5; these include instruments pursuant to Annex 1 Section C No 10 of Directive 2004/39/EC (OJ L 145/1 of 21 April 2004).*

**CERTAIN TRANSACTIONS UNDER
THE ISDA MASTER AGREEMENTS**

Basis Swap. A transaction in which one party pays periodic amounts of a given currency based on a floating rate and the other party pays periodic amounts of the same currency based on another floating rate, with both rates reset periodically; all calculations are based on a notional amount of the given currency.

Bond Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a bond of an issuer, such as Kingdom of Sweden or Unilever N.V., at a specified strike price. The bond option can be settled by physical delivery of the bonds in exchange for the strike price or may be cash settled based on the difference between the market price of the bonds on the exercise date and the strike price.

Bullion Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of Ounces of Bullion at a specified strike price. The option may be settled by physical delivery of Bullion in exchange for the strike price or may be cash settled based on the difference between the market price of Bullion on the exercise date and the strike price.

Bullion Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency calculated by reference to a Bullion reference price (for example, Gold-COMEX on the New York Commodity Exchange) or another method specified by the parties. Bullion swaps include cap, collar or floor transactions in respect of Bullion.

Bullion Trade. A transaction in which one party agrees to buy from or sell to the other party a specified number of Ounces of Bullion at a specified price for settlement either on a “spot” or two-day basis or on a specified future date. A Bullion Trade may be settled by physical delivery of Bullion in exchange for a specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

For purposes of Bullion Trades, Bullion Options and Bullion Swaps, “Bullion” means gold, silver, platinum or palladium and “Ounce” means, in the case of gold, a fine troy ounce, and in the case of silver, platinum and palladium, a troy ounce.

Buy/Sell-Back Transaction. A transaction in which one party purchases a security (in consideration for a cash payment) and agrees to sell back that security (or in some cases an equivalent security) to the other party (in consideration for the original cash payment plus a premium).

Cap Transaction. A transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified floating rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap) in each case that is reset periodically over a specified per annum rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap).

Collar Transaction. A collar is a combination of a cap and a floor where one party is the floating rate, floating index or floating commodity price payer on the cap and the other party is the floating rate, floating index or floating commodity price payer on the floor.

Commodity Forward. A transaction in which one party agrees to purchase a specified quantity of a commodity at a future date at an agreed price and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. The payment calculation is based on the quantity of the commodity and is settled based, among other things, on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified quantity of a commodity at a specified strike price. The option can be settled either by physically delivering the quantity of the commodity in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay to the buyer the difference between the market price of that quantity of the commodity on the exercise date and the strike price.

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

Credit Protection Transaction.¹ A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. Credit protection transactions may also be physically settled by payment of a specified fixed amount by one party against delivery of specified Reference Obligations by the other party. A credit protection transaction may also refer to a "basket" (ten or less) or an "index" (eleven to one hundred twenty-five) of Reference Entities.

Credit Protection Transaction on Asset-Backed Securities. A Credit Protection Transaction for which the Reference Obligation is a cash or synthetic asset-backed security. Such a transaction may, but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.

¹ Some market participants may refer to credit protection transactions as credit swaps, credit default swaps or credit default options.

Credit Spread Transaction. A transaction involving either a forward or an option where the value of the transaction is calculated based on the credit spread implicit in the price of the underlying instrument.

Cross Currency Rate Swap. A transaction in which one party pays periodic amounts in one currency based on a specified fixed rate (or a floating rate that is reset periodically) and the other party pays periodic amounts in another currency based on a floating rate that is reset periodically. All calculations are determined on predetermined notional amounts of the two currencies; often such swaps will involve initial and or final exchanges of amounts corresponding to the notional amounts.

Currency Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a given currency at a specified strike price.

Currency Swap. A transaction in which one party pays fixed periodic amounts of one currency and the other party pays fixed periodic amounts of another currency. Payments are calculated on a notional amount. Such swaps may involve initial and or final payments that correspond to the notional amount.

Economic Statistic Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency by reference to interest rates or other factors and the other party pays or may pay an amount or periodic amounts of a currency based on a specified rate or index pertaining to statistical data on economic conditions.

Equity Forward. A transaction in which one party agrees to pay an agreed price for a specified quantity of shares of an issuer, a basket of shares of several issuers or an equity index at a future date and the other party agrees to pay a price for the same quantity of shares of an issuer to be set on a specified date in the future. The payment calculation is based on the number of shares and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an equity index either exceeds (in the case of a call) or is less than (in the case of a put) a specified strike price.

Equity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) shares of an issuer or a basket of shares of several issuers at a specified strike price. The share option may be settled by physical delivery of the shares in exchange for the strike price or may be cash settled based on the difference between the market price of the shares on the exercise date and the strike price.

Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency based on the performance of a share of an issuer, a basket of shares of several issuers or an equity index, such as the Standard and Poor's 500 Index.

Emissions Allowance Transaction. A transaction in which one party agrees to buy or sell to the other party a specified quantity of emissions allowances at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may be settled by physical delivery of emissions allowances in exchange for a specified price or may be cash settled based on the difference between the market price of Emissions Allowances on the settlement date and the specified price.

Floor Transaction. A transaction in which one party pays a single or periodic amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified per annum rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor) over a specified floating rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor).

Foreign Exchange Transaction. A transaction providing for the purchase of one currency with another currency providing for settlement either on a "spot" or two-day basis or a specified future date.

Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.

Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

Interest Rate Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an interest rate either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike rate.

Interest Rate Swap. A transaction in which one party pays periodic amounts of a given currency based on a specified fixed rate and the other party pays periodic amounts of the same currency based on a specified floating rate that is reset periodically, such as the London inter-bank offered rate; all calculations are based on a notional amount of the given currency.

Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates.

Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.

Securities Lending Transaction. A transaction in which one party transfers securities to a party acting as the borrower in exchange for a payment or a series of payments from the borrower and the borrower's obligation to replace the securities at a defined date with identical securities.

Swap Option. A transaction in which one party grants to the other party the right (in consideration for a premium payment), but not the obligation, to enter into a swap with certain specified terms. In some cases the swap option may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.

Total Return Swap. A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation.

A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.

Weather Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to weather conditions, which may include measurements of heating, cooling, precipitation and wind.