Memorandum of law

Private & Confidential

To	International Swaps and Derivatives Association, Inc.
From	King & Wood Mallesons
Date	16 March 2017
Subject	**Enforceability under PRC law of close-out netting of privately negotiated derivatives transactions under the ISDA Master Agreements against a PRC State Counterparty**

Part 1 Introduction and our opinion under PRC law

1 Introduction

This memorandum considers the enforceability under the laws of the People's Republic of China (for the purpose of this memorandum, not including the Hong Kong Special Administrative Region, the Macau Special Administrative Region or Taiwan, the "**PRC**") of close-out netting of privately negotiated derivatives transactions of a type falling within one or more of the types of transactions described in Appendix A (each a "**Transaction**") entered into under an agreement between two parties based on one of the following standard form documents published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"):

(a) the 1992 ISDA Master Agreement (the "**1992 Master Agreement**"); or

(b) the 2002 ISDA Master Agreement (the "**2002 Master Agreement**" and, together with the 1992 Master Agreement, the "**ISDA Master Agreements**").

In this memorandum we only consider the enforceability of close-out netting under the ISDA Master Agreements against:

(i) the People's Bank of China (the "**PBOC**");

(ii) the State Administration of Foreign Exchange (the "**SAFE**") and

(iii) the Ministry of Finance (the "**MOF**"),

each a "**PRC State Counterparty**" and together the "**PRC State Counterparties**".

We do not consider enterprises incorporated as legal persons in the PRC (each a "**Chinese Counterparty**"), partnerships organised under PRC law or individuals. The enforceability of close-out netting under the ISDA Master Agreements against a Chinese Counterparty is considered in our memorandum to ISDA dated 16 March 2017.

Subject to the assumptions and qualifications set out in Part 5 and other parts of this memorandum, we have set out our opinion in paragraph 2 of this Part 1 and our analysis in Part 2.

We express no opinion about the laws of any jurisdiction other than the PRC, or factual matters.

A capitalised term used and not defined in this memorandum has the meaning given to that term in the relevant ISDA Master Agreement. References to "Sections" are to Sections of the relevant ISDA Master Agreement.

2 Our opinion under PRC law

Subject to the assumptions and qualifications (particularly, in relation to sovereign immunity) set out in Part 5 and other parts of this memorandum, our views are:

(a) the *PRC Enterprise Bankruptcy Law*[1] (the "**Bankruptcy Law**") does not apply to the PRC State Counterparties and there is no other legislation under PRC law which specifically provides for the bankruptcy of the PRC State Counterparties;

(b) the PRC courts do not have the statutory power or jurisdiction to accept or process bankruptcy petitions filed against the PRC State Counterparties, and bankruptcy proceedings cannot be commenced against the PRC State Counterparties in the PRC courts;

(c) Section 6(a), which permits the Non-defaulting Party to terminate all the Transactions by notice designating an Early Termination Date, would be enforceable as a matter of contract against a PRC State Counterparty; and

(d) Section 6(e), which provides for the netting of termination values in determining a single lump-sum termination amount after the occurrence of an Early Termination Date, would be enforceable as a matter of contract against a PRC State Counterparty.

Part 2 Our legal analysis under PRC law

3 Choice of foreign law as the governing law

Under the *PRC Contract Law*[2] (the "**Contract Law**") and the *PRC Law on Application of Laws for Foreign Related Civil Relationships*[3] (the "**Foreign Relationships Application Law**"), parties to a contract with a "foreign element" can contractually agree to adopt foreign law as the governing law for their contract unless:

(a) the choice of foreign law is expressly prohibited by PRC law;[4] or

(b) the PRC law provides for "mandatory requirements" applicable to a foreign related civil relationship, in which case such mandatory requirements under PRC law apply directly regardless of the parties' choice of governing law.[5]

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[1] Issued by the National People's Congress (the "**NPC**") on 27 August 2006 and effective as of 1 June 2007.

[2] Issued by the NPC on 15 March 1999 and effective as of 1 October 1999.

[3] Issued by the NPC on 28 October 2010 and effective as of 1 April 2011.

[4] Article 126 of the Contract Law.

[5] Article 4 of the Foreign Relationships Application Law.

We believe that the parties' choice of English law or New York law as the governing law for an ISDA Master Agreement would be valid and enforceable under PRC law because:

(i) a contract between a Chinese entity and a foreign entity is treated under PRC law as a contract with a "foreign element". On the basis that one of the parties to the relevant ISDA Master Agreement is a foreign institution, the parties may adopt foreign law (New York law or English law) as the governing law of that ISDA Master Agreement; and

(ii) the choice of New York law or English law does not contravene any "mandatory requirements" under PRC law. In interpreting what constitutes "mandatory requirements", the Supreme People's Court of the PRC (the "**Supreme Court**") provides a list of circumstances to which PRC law applies mandatorily.[6] We are of the view that privately negotiated derivatives transactions under an ISDA Master Agreement fall outside such restricted circumstances.[7]

4 Legal nature of the PBOC, the SAFE and the MOF

According to the *PRC Law on the People's Bank of China*,[8] the PBOC is the Central Bank of the PRC, and its functions include the formulation and implementation of the monetary policies of the PRC, the issuance and administration of the Renminbi, and the supervision and regulation of certain financial markets such as the China Interbank Bond Market, among other functions.

The SAFE reports to both the State Council of the PRC and the PBOC, and its functions include the administration of the foreign exchange system, the regulation and monitoring of foreign exchange transactions, and the management of foreign exchange reserves, among other functions.

The MOF is one of the constituent departments of the State Council of the PRC and is responsible for administering the macroeconomic policies and national budget of the PRC, including the handling of fiscal policy, economic regulations and government expenditure for the PRC.

The PRC State Counterparties are organs of the State and the Central People's Government of the PRC (the "**PRC State**"). Accordingly, an ISDA Master Agreement and any Transactions entered into with a PRC State Counterparty thereunder could, in effect, be viewed as an agreement made with the PRC State itself as a sovereign entity.

5 Bankruptcy Law does not apply to the PBOC, the SAFE or the MOF

The Bankruptcy Law does not apply to the PRC State Counterparties, and there is no other legislation under PRC law which specifically provides for the bankruptcy of the PRC State (including entities which are organs of the PRC State, such as the PRC State Counterparties). The legal issues in respect of bankruptcy stay, an administrator's "cherry-picking" right and statutory set-off under the Bankruptcy Law are not applicable to, and therefore would not affect the enforceability of, the

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6 Article 10 of the Supreme People's Court Interpretation (I) on the PRC Law on Application of Laws for Foreign Related Civil Relationships issued on 28 December 2012 and effective as of 7 January 2013.

7 The circumstances where PRC law mandatorily applies regardless of the parties' agreement include: (i) protection of employees' benefits, (ii) food safety or public health and safety, (iii) environmental safety, (iv) foreign exchange control and other financial safety, (v) anti-trust, and (vi) other circumstances where PRC law shall mandatorily apply.

8 Issued by the NPC on 18 March 1995 and effective as of 18 March 1995.

contractual early termination and netting provisions in an ISDA Master Agreement entered into by a PRC State Counterparty.

Under PRC law, the PRC courts do not have the statutory power or jurisdiction to accept or process bankruptcy petitions filed against a PRC State Counterparty, and bankruptcy proceedings cannot be commenced against a PRC State Counterparty in the PRC courts.

Part 3 ISDA Cross-Agreement Bridges

6 2001 Bridge

In our view, the conclusions reached in this memorandum would not be materially affected by the inclusion of the 2001 ISDA Cross-Agreement Bridge (the "**2001 Bridge**") in the ISDA Master Agreements. We do not in this memorandum give any opinion on the validity or enforceability of the 2001 Bridge under PRC law.

7 2002 Bridge

In our view, the conclusions reached in this memorandum would not be materially affected by the inclusion of the 2002 ISDA Energy Agreement Bridge (the "**2002 Bridge**") in the ISDA Master Agreements. We do not in this memorandum give any opinion on the validity or enforceability of the 2002 Bridge under PRC law.

8 Assumptions for this Part 3

For this Part 3 only, we assume the following facts:

(a) either the 2001 Bridge or the 2002 Bridge is included in the Schedule of the relevant ISDA Master Agreement;

(b) if the ISDA Master Agreement is a 2002 Master Agreement, the 2001 Bridge or the 2002 Bridge (as applicable) has been suitably modified for inclusion in the Schedule to the 2002 Master Agreement. For example, we note that Section 1(e) of the 2001 Bridge and Section 1(f) of the 2002 Bridge contemplate the relevant payment measure being Market Quotation or Loss. Although these terms are used in the 1992 Master Agreement, they are not used in the 2002 Master Agreement; and

(c) the ISDA Master Agreement to which the 2001 Bridge or the 2002 Bridge is attached gives rise to a single amount payable which can be included in the Section 6(e) calculation in the ISDA Master Agreement.

Part 4 Close-out Amount Protocol and June 2014 Amendment

9 Close-out Amount Protocol

On the assumption that the changes intended by the 2009 ISDA Close-out Amount Protocol (the "**Close-out Amount Protocol**") are effective as a matter of the governing law of the Covered Master Agreement (as defined in the Close-out Amount Protocol), in our view, the changes made by the Close-out Amount Protocol are not material to and do not affect the conclusions reached in this memorandum. This means that the conclusions reached in paragraph 2 of this memorandum in respect of the amounts payable on close-out under the 2002 Master Agreement would apply to the 1992 Master Agreement amended by the Close-out Amount Protocol.

10 June 2014 Amendment

On the assumption that the changes intended by the June 2014 Amendment to the ISDA Master Agreements in relation to Section 2(a)(iii) (the "**June 2014 Amendment**") are effective as a matter of the governing law of the Agreement (as defined in the June 2014 Amendment), in our view, the changes made by the June 2014 Amendment are not material to and do not affect the conclusion reached in paragraph 2 of this memorandum.

Part 5 Assumptions, qualifications and benefit

11 Our assumptions

In addition to the assumptions made in this memorandum, we summarise below our understanding of the background to the ISDA Master Agreements and our assumptions in conducting our legal analysis for the purpose of this memorandum:

(a) two parties have entered into an ISDA Master Agreement:

(i) in the form of the 2002 Master Agreement or the 1992 Master Agreement, provided that, in the case of the 1992 Master Agreement, the parties have amended the 1992 Master Agreement to adopt the Second Method payment method for all Events of Default as well as Termination Events;

(ii) governed by New York law or English law (as selected by the parties); and

(iii) where one party to the ISDA Master Agreement is a PRC State Counterparty and the other party is an institution incorporated outside the PRC;

(b) no provision of the ISDA Master Agreements which is necessary for the conclusions made in this memorandum has been altered in any material respect. In our view, contractual selections contemplated by Sections 5 and 6, made pursuant to a Schedule to the relevant ISDA Master Agreement or in a Confirmation of a Transaction under the relevant ISDA Master Agreement, would not be considered a material alteration for this purpose;

(c) on the basis of the terms and conditions of the ISDA Master Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the ISDA Master Agreement, the parties over time enter into a number of Transactions that are intended to be governed by the ISDA Master Agreement. These Transactions include any or all of those Transactions set out in Appendix A;

(d) some of the Transactions provide for an exchange of cash by both parties and others provide for the physical delivery of shares, bonds or commodities in exchange for cash;

(e) the ISDA Master Agreement and each Confirmation are within the capacity and powers of, and have been validly authorised by, each party, and such authorisations remain in full force and effect in accordance with their respective constitutional documents;

(f) the obligations of each party under the ISDA Master Agreement are legal, valid and binding under New York law or English law as the relevant governing law of the ISDA Master Agreement;

(g) no party enters into the ISDA Master Agreement or any Transactions in the capacity of a trustee of any trust. There is full mutuality between the parties in respect of all Transactions;

(h) the parties abide by the principle of good faith in exercising their rights and performing their obligations under the ISDA Master Agreement; and

(i) insofar as any obligation falls to be performed in any jurisdiction outside the PRC, the party's performance will not be illegal or ineffective by virtue of the laws of that jurisdiction.

We have not taken any steps to verify these assumptions.

12 Qualifications

This memorandum is subject to the following qualifications:

(a) the opinions are confined solely to the laws of the PRC as in force at the date of this memorandum. We have assumed that no foreign law qualifies or affects our opinion as set out above. No opinion is expressed on matters of fact;

(b) the term "enforceable" means that each obligation or document is of a type and form enforceable by the PRC courts. The term does not address the extent to which a judgment obtained in a court outside the PRC will be enforceable in the PRC. Nor does it mean that each obligation or document will be enforced in accordance with its terms. Certain rights and obligations may be qualified by the nature of the remedies available in the PRC courts, the acceptance by such courts of jurisdiction, the power of such courts to stay proceedings, doctrines of good faith and laws based on those doctrines and other principles of law of general application;

(c) claims under the ISDA Master Agreements may become barred by operation of statute of limitations under applicable laws or may be or become subject to set-off or counterclaim;

(d) a PRC court may not give effect to a provision of an agreement that is inconsistent with PRC public policy, although we note that this should be unlikely to apply to the close-out netting provisions in the ISDA Master Agreements in light of the recent developments in the PRC financial market;

(e) any provision of the ISDA Master Agreements which constitutes, or purports to constitute, a restriction on the exercise of any statutory power may be ineffective;

(f) the effectiveness of terms exculpating a party from a liability or from a duty otherwise owed may be limited by law or regulation; and

(g) the position of the PRC State is that "absolute immunity" shall apply and, accordingly, the PRC State does not accept any foreign courts as having jurisdiction over cases in which the PRC State (including entities which are organs of the PRC State, such as the PRC State Counterparties) is sued as a defendant, or over cases involving the property of the PRC State (including the PRC State Counterparties). Further, we believe that the PRC State would not recognise Section 13(d) as constituting an effective waiver of its sovereign immunity in foreign courts. However, it falls outside the scope of this memorandum to consider how foreign courts may, in applying the applicable laws of their jurisdiction, determine the issue of sovereign immunity in cases brought against a PRC State Counterparty.

13 Benefit

This memorandum is addressed to ISDA solely for the benefit of its members in relation to their use of the ISDA Master Agreements. No other person may rely on this memorandum for any purpose without our prior written consent. This memorandum may, however, be shown by an ISDA member to a competent regulator or supervisory authority or professional advisors to such ISDA member for the purposes of information only, on the basis that we assume no responsibility to such authority or any other person as a result, or otherwise.

This memorandum is given in respect of the laws of the PRC which are in force at 9.00 am Beijing time on the date of this memorandum.

King & Wood Mallesons

King & Wood Mallesons

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 Forward. A transaction in which one party agrees to pay an agreed price for a specified amount of a bond of an issuer or a basket of bonds of several issuers at a future date and the other party agrees to pay a price for the same amount of the same bond to be set on a specified date in the future. The payment calculation is based on the amount of the bond 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).

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 specified amount of 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 COMEX Division of the New York Mercantile 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 (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium).

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. A Commodity Forward may be settled by the physical delivery of the commodity in exchange for the specified price or may be cash settled based on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity 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 based on the price of one or more commodities.

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., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

Contingent Credit Default Swap. A Credit Default Swap Transaction under which the calculation amounts applicable to one or both parties may vary over time by reference to the mark-to-market value of a hypothetical swap transaction.

Credit Default Swap 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 enter into a Credit Default Swap.

Credit Default Swap. 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. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations (“Deliverable Obligations”) by the other party. A Credit Default Swap may also refer to a “basket” (typically ten or less) or a “portfolio” (eleven or more) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap 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.

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, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.

Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may also constitute a swap of emissions allowances or reductions or an option whereby 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 the specified quantity of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.

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 and shares 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) a specified number of 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 or floating 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.

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 deliverable or non-deliverable 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.

Fund Option Transaction: A transaction in which one party grants to the other party (for an agreed payment or other consideration) the right, but not the obligation, to receive a payment based on the redemption value of a specified amount of an interest issued to or held by an investor in a fund, pooled investment vehicle or any other interest identified as such in the relevant Confirmation (a "Fund Interest"), whether i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests in relation to a specified strike price. The Fund Option Transactions will generally be cash settled (where settlement occurs based on the excess of such redemption value over such specified strike price (in the case of a call) or the excess of such specified strike price over such redemption value (in the case of a put) as measured on the valuation date or dates relating to the exercise date).

Fund Forward Transaction: A transaction in which one party agrees to pay an agreed price for the redemption value of a specified amount of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests at a future date and the other party agrees to pay a price for the redemption value of the same amount of the same Fund Interests to be set on a specified date in the future. The payment calculation is based on the amount of the redemption value relating to such Fund Interest and generally cash-settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).

Fund Swap Transaction: A transaction 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 based on the redemption value of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests.

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.

Longevity/Mortality Transaction. (a) A transaction employing a derivative instrument, such as a forward, a swap or an option, that is valued according to expected variation in a reference index of observed demographic trends, as exhibited by a specified population, relating to aging, morbidity, and mortality/longevity, or (b) A transaction that references the payment profile underlying a specific portfolio of longevity- or mortality-contingent obligations, e.g. a pool of pension liabilities or life insurance policies (either the actual claims payments or a synthetic basket referencing the profile of claims payments).

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

Property Index Derivative Transaction. A transaction, often structured in the form of a forward, option or total return swap, between two parties in which the underlying value of the transaction is based on a rate or index based on residential or commercial property prices for a specified local, regional or national area.

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 Deliverable Contingent Credit Default Swap. A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.

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.