ALLEN & OVERY

Allen & Overy LLP
One New Change
London EC4M 9QQ United Kingdom

Tel +44 (0)20 7330 3000
Fax +44 (0)20 7330 9999

International Swaps and Derivatives Association, Inc.
360 Madison Avenue
16th Floor
New York, NY 10017
U.S.A.

For the attention of: Kimberly Summe

Our ref EHM/DSF/FIOC/30047-00666 ICM:2126609.2

6 December 2005

Dear Sirs

Close-out netting under English law

We refer to your letter of 30 August 2005 which refers to our Memorandum of law of 5 March 2004, as updated by our letter dated 15 November 2004, regarding the enforceability of the termination, bilateral close-out netting and multibranch netting provisions of the 1987,[1] 1992 and 2002 ISDA Master Agreements (the **Memorandum**). Capitalised terms used in this letter without definition have, unless the context indicates otherwise, the meanings given to those terms in the relevant ISDA Master Agreements.

You have asked us to review any and all recent developments since 15 November 2004 that could materially and adversely affect the conclusions set out in the Memorandum. You have also asked us to inform you of any pending legal or regulatory developments in England and Wales concerning the enforceability of close-out netting.

We deal with each of these issues in turn below.

In addition, you have asked us to provide this update by reference to the list of Transactions which are set out in Appendix A to your letter of 30 August 2005, a copy of which (Appendix A only) is attached to this letter. Accordingly, the Memorandum, as updated by this letter, should be read as if the attached Appendix A had replaced the previous version of Appendix A attached to and referred to in the Memorandum.

1. RECENT DEVELOPMENTS

We confirm that since 15 November 2004 there have not been any developments which could materially and adversely affect the conclusions set out in the Memorandum. The advice given in the Memorandum therefore continues to reflect our understanding of the law of England and Wales as of today's date, subject to two important developments discussed below.

[1] The ISDA Interest Rate Swap Agreement and the ISDA Interest Rate and Currency Exchange Agreement (together with the ISDA Interest Rate Swap Agreement, the **1987 ISDA Master Agreements**).

1.1 Set-off post insolvency

The Insolvency (Amendment) Rules 2005 (the **2005 Rules**), which came into effect on 1 April 2005,[2] amend amongst other things Rule 4.90 and Rule 2.85 of the Insolvency Rules 1986, which provide for mandatory set-off upon winding-up (Rule 4.90) and in the event of a distribution during administration (Rule 2.85). Prior to the Insolvency (Amendment) Rules 2005 coming into effect, the Insolvency Rules did not expressly provide for the set-off of contingent debts owing *to* the insolvent, although the judgement of the House of Lords in *In the matter of West End Networks Limited (in Liquidation); Secretary of State for Trade and Industry v Frid*, referred to in the Memorandum, helped to clarify the law on the set-off of contingent claims.

The 2005 Rules make conforming changes between Rule 4.90 and Rule 2.85 and also amend those rules to provide expressly that contingent and future debts owing *to* and *by* the insolvent are to be set off provided they arise out of obligations incurred prior to the insolvency date. Rule 4.90(4) (in the case of winding-up) and Rule 2.85(4) (in the case of administration) now specifically provide that a sum shall be regarded as due to or from the insolvent for the purposes of insolvency set-off whether (a) it is payable at present or in the future, (b) the obligation by virtue of which it is payable is certain or contingent, or (c) the amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion. In addition, the 2005 Rules provide that contingent claims are to be estimated in accordance with Rule 4.86 (in the case of winding-up) and Rule 2.81 (in the case of administration).

As a result, the analysis in our opinion based on insolvency set-off has been strengthened.

1.2 Judgements in foreign currencies

In *Carnegie v Giessen and others*,[3] the court considered the question of when a debt in a foreign currency should be converted into sterling for the purposes of enforcing the judgement on that debt. The court considered the reasoning and conclusions reached by the House of Lords in *Miliangos v George Frank (Textiles) Ltd*,[4] referred to in the Memorandum, and confirmed that the conclusions reached by the House of Lords in that case do not lay down a specific time for conversion in relation to any particular enforcement process. The time for conversion is "as close as practicable to the date of payment, having regard to the realities of enforcement procedures".[5] As such, the reference by the court in *Miliangos v George Frank* to "the date when the court authorises enforcement"[6] should not be taken as of general application.

2. PENDING DEVELOPMENTS

We confirm that there are no legal or regulatory developments pending that are likely to affect materially and adversely the conclusions set out in the Memorandum.

---

2 SI 2005/527

3 [2005] 1 WLR 2510

4 [1975] 3 All ER 801

5 *Carnegie v Giessen and others*, [2005] 1 WLR 2510

6 *Miliangos v George Frank (Textiles) Ltd*, [1975] 3 All ER 801

This letter, which should be read together with the 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 letter for any purpose without prior written consent. This letter may, however, be shown by an ISDA member to a competent regulatory authority for such ISDA member for the purposes of information only, on the basis that we assume no responsibility to such authority or to any other person as a result or otherwise.

Yours faithfully

Allen & Overy LLP

Allen & Overy LLP

ISDA

International Swaps and Derivatives Association, Inc.
360 Madison Avenue, 16th Floor
New York, NY 10017
United States of America
Telephone: 1 (212) 901-6000
Facsimile: 1 (212) 901-6001
email: isda@isda.org
website: www.isda.org

APPENDIX A
JULY 2005

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 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) 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) 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 or floating commodity price payer on the cap and the other party is the floating rate 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.[2] 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" of two or more Reference Entities.

---

2 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.

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.

EU Emissions Allowance Transaction. A transaction in which one party agrees to purchase a specified quantity of emissions allowances at a future date at an agreed price and the other party agrees to deliver that quantity of emissions allowances for that agreed 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) or commodity price (in the case of a commodity floor) over a specified floating rate (in the case of an interest rate 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.

Inflation 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 an amount or periodic amounts of a currency based on a specified rate of inflation.

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 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.