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~~2231~~ March ~~2007~~2008

File No: ~~60396.6~~68874.2

To: **International Capital Market Association (ICMA)**
Talacker 29
P.O. Box
8022 Zurich
Switzerland

Dear Sirs,

~~TBMA/ISMA~~ **Global Master Repurchase Agreement**

~~Dear Sirs,~~

CORE OPINION

This opinion consists of a Core Opinion and Appendix 1.

We have been instructed to give an opinion as to the validity under the laws of Thailand of the 1995 version of the TBMA/ISMA Global Master Repurchase Agreement (*GMRA 1995*) and the 2000 version of the TBMA/ISMA Global Master Repurchase Agreement (*GMRA 2000*) (together the *GMRA*) as published by ICMA and the Securities Industry and Financial Markets Association (*SIFMA*) and the annexes listed in the Appendix 1, Part 1 to this opinion.

Subject to our assumption in paragraph (i) below, the term GMRA 2000 and the substance of our opinion in relation to that Agreement shall apply to both the GMRA 2000 and the GMRA 1995 as amended by entry by the parties into the amendment agreement in the form published by ICMA and SIFMA.

Terms defined in the GMRA have the same meaning in this opinion in relation to that GMRA.

This opinion is given in respect of parties that are:

- (a) ~~ordinary~~ companies;
- (b) partnerships;
- (c) commercial banks;
- (d) finance companies;
- (e) credit foncier companies;
- (f) securities companies;
- (g) life and non-life insurance companies; ~~and~~

- (h) mutual funds, private funds, ~~pension funds and~~ provident funds and the government pension fund;
and
- (i) the Bank of Thailand.

in each case incorporated, organized, established or formed under the laws of Thailand and branches established or located in Thailand of entities incorporated or organized outside Thailand of the type referred in (a) to (h) above (a “Thailand Party”).

A company incorporated or organized in Thailand is incorporated or organized either under the Civil and Commercial Code of Thailand (CCC) or the Public Limited Company Act of Thailand. A partnership incorporated or organized in Thailand is incorporated or organized under the CCC. A commercial bank organized or established in Thailand is organized or established under the Commercial Banking Act. A finance company or credit foncier company organized or established in Thailand is organized or established under the Act on the Undertaking of Finance Business, Securities Business and Credit Foncier Business. A securities company organized or established in Thailand is organized or established under the Securities and Exchange Act. A life and non-life insurance company organized or established in Thailand is organized or established under the Life Insurance Act and Non-Life Insurance Act, respectively. A mutual fund or private fund established or formed in Thailand is established or formed under the Securities and Exchange Act. ~~A pension fund established or formed in Thailand is established or formed under the Pension Fund Act.~~ A provident fund established or formed in Thailand is established or formed under the Provident Fund Act. The government pension fund established or formed in Thailand is established or formed under the Government Pension Fund Act. The Bank of Thailand is established or formed under the Bank of Thailand Act.

This opinion is confined to matters of Thai law and we express no opinion with regard to any system of law other than the laws of Thailand.

We have assumed that:

- (a) each party has all requisite capacity and corporate power to execute, deliver and perform its obligations under the GMRA and each party has taken all necessary steps to execute, deliver and perform the GMRA and all transactions entered into under the GMRA;
- (b) the GMRA has been duly authorised, executed and delivered by each party in accordance with all applicable laws;
- (c) other than by the annexes to the GMRA listed in the Appendix I, Part I of the GMRA, the Cross-Product Master Agreement in the form published by SIFMA (February 2000 and June 2003 versions) ~~version~~ (the *CPMA*) or as stated in this opinion, none of the terms of the GMRA has been varied, waived or discharged in any material respects and transactions have been entered into as specified in the GMRA;
- (d) the GMRA is legal, valid, binding and enforceable under English law;
- (e) the GMRA has been entered into at arms' length by each of the parties;
- (f) the GMRA and all transactions entered into under the GMRA are entered into prior to the formal commencement of insolvency proceedings against either party;
- (g) at the time at which a transaction is entered into under the GMRA, neither party has actual notice of the insolvency of the other party;

- (h) the requirements of the law (other than the law of Thailand) governing the transfer of Securities and Margin are complied with;
- (i) where the parties to a GMRA 1995 have subsequently executed an amendment agreement in the form published by ICMA and SIFMA the effect of such amendment agreement will be to amend the terms of GMRA 1995 to conform GMRA 1995 to GMRA 2000;
- (j) where the parties have entered into a CPMA, we repeat our assumptions in (a)-(f) above in relation to such CPMA and, in addition, have assumed, without further investigation, that such CPMA constitutes a valid and binding agreement between the parties under all applicable laws.

Subject to the above and subject to the qualifications and observations set out in Section 9 below, we are of the opinion that under the laws of Thailand:

1. Insolvency proceedings

1.1 The only bankruptcy, composition, rehabilitation (e.g. administration, receivership or voluntary arrangement) or other insolvency proceedings to which a ~~party incorporated in or with a branch in~~ Thailand Party would be subject in Thailand are the following:

- ◆ bankruptcy; or
- ◆ business reorganization,

in each case under the Thai Bankruptcy Act (the *TBA*) (being, together, referred to hereinafter as *Insolvency Proceedings*).

(a) Bankruptcy: Although the TBA does not specifically define the term “debtor”, subject to any specific law to the contrary, it applies to any natural person or juristic person. Accordingly, the TBA will apply to those entities listed in (a) - (g) of the first page of this opinion.

Mutual funds, provident funds and the Government Pension Fund, as juristic persons, are also subject to bankruptcy under the TBA. However, the Securities and Exchange Act does not specify that a “private fund” is a juristic person and, as such, a private fund may not be subject to bankruptcy under the TBA.

The Bank of Thailand, as a governmental agency pursuant to the Bank of Thailand Act, is not subject to the bankruptcy regime of the TBA. If the Bank of Thailand is unable to fulfill any of its obligations, the State is fully responsible for performing such obligations. The rationale for this is based on the opinion of the Council of State, which is the legal advisor to the government of the Kingdom of Thailand (the *Council of State*), issued in April 1993, which concluded that the State’s properties cannot be subject to legal execution in accordance with Section 1307 of the CCC.

(b) Business reorganization: The TBA defines “debtor” for the purposes of a business reorganization under the TBA. A debtor is defined as a limited company, a public limited company or other juristic person as prescribed by any ministerial regulation. To date, no such ministerial regulation has been issued which expands the definition of debtor set out in the TBA. Accordingly, the provisions relating to “business reorganization” under the TBA, only apply to the entities listed in items (a) - (g) of the first page of this opinion.

A company incorporated outside Thailand with a branch in Thailand is subject to the bankruptcy regime of the TBA if it carries on, or has carried on, a business in Thailand, whether by itself or by a

representative, at the time an application is made to adjudge it bankrupt or during the period of one year prior to the application. A company incorporated outside Thailand is not subject to the reorganization procedure of the TBA.

Under the TBA (Section 177) "the receivership of assets or a bankruptcy action under this Act relates only to the assets of the debtor within the Kingdom". Accordingly, the Official Receiver would only have power to deal with the assets of the insolvent debtor located in Thailand.

~~1.2 We confirm that all Insolvency Proceedings would be adequately covered by the definition of Act of Insolvency in the GMRA.~~

~~2. Bankruptcy treaties~~

Thailand has not entered into any bankruptcy treaties with any other country. Thus, a foreign bankruptcy judgment is not directly enforceable in Thailand and will not have any effect on the debtor's assets located within Thailand. Rather, a party seeking to enforce a foreign judgment in Thailand must first obtain a judgment from a Thai court. A foreign bankruptcy judgment or any judgment of a foreign court will be admissible in evidence in Thai court proceedings.

~~1.2 We confirm that all Insolvency Proceedings would be adequately covered by the definition of Act of Insolvency in the GMRA.~~

~~3.2. Validity of the Agreement~~

~~3.1 The GMRA will be legal, valid, binding and enforceable under the laws of Thailand and will take effect in accordance with its terms.~~

~~However, an agreement for the sale of movable property for a price of Baht 20,000 or more may not be enforceable unless there is written evidence signed by the party liable or "earnest" is given or there is part performance. Accordingly, a Transaction may not be enforceable unless these requirements are fulfilled.~~

~~We consider that the execution of the GMRA by both parties together with part performance by either party or written confirmation (which includes (i) a fax signed by the party liable and (ii) an electronic data (such as telex, telegraph and electronic mail) affixed with electronic signature of the party liable in accordance with the Electronic Transactions Act B.E 2544 (2001)) satisfy this requirement.~~

~~3.2 A court in Thailand would uphold the choice of English law as a valid choice of law to govern the GMRA, but only to the extent that such law is: (i) proved to the satisfaction of the court (which satisfaction is within the discretion of the court), and (ii) not considered contrary to the public order or good morals of the people of Thailand. The scope of the public order or good morals of the people of Thailand has not been definitely established. However, except as set out in this opinion, we are not aware of anything in the GMRA which would be contrary to the public order or good morals of the people of Thailand.~~

~~There is no basis under Thai law for submission to the jurisdiction of a court outside Thailand and, accordingly, the validity and binding effect of the submission by any person to the non-exclusive jurisdiction of foreign courts is uncertain.~~

~~3.3 Without limiting Section 3.1 above, Transactions entered into under the GMRA (whether a Repurchase Transaction or a Buy/Sell Back Transaction) should, assuming the formalities for the transfer of title to the Purchased Securities are carried out in accordance with applicable law, take effect as a transfer of absolute title in the Purchased Securities from the Seller to the Buyer, and the Buyer should have only a contractual obligation to transfer Equivalent Securities on the Repurchase Date. We do not think that a court in Thailand would recharacterise the arrangements and think it would honour the terms of the GMRA, although there is no decision of the Supreme Court directly on point.~~

~~Section 16 of the Conflict of Laws Act B.E. 2481 provides to the effect that the law of the place where the property is situated governs movable and immovable property. In other words, the applicable law governing the formalities for transfer of title to the securities is the *lex situs* of the securities.~~

~~3.4 — Similar to initial transfers, the transfer of cash and securities by way of Margin pursuant to paragraph 4 of the GMRA should be recognized by a court in Thailand as a transfer of absolute title in the assets transferred with an obligation on the transferee to repay Cash Margin or deliver Equivalent Margin Securities as appropriate. We do not think that a court in Thailand would seek to upset or recharacterise transfers made pursuant to paragraph 4 of the GMRA, although, as stated in Section 3.3 above, there is no decision of the Supreme Court directly on point.~~

~~3.5 — A court in Thailand should uphold the alternative margin methods provided for in paragraphs 4(i), (j) and (k) of the GMRA, provided that the enforceability requirements referred to in Section 3.1 above are satisfied in relation to a Replacement Transaction [Please refer to Appendix 1, Part II.](#)~~

4.3. Netting provisions

~~4.1 — The central provisions of the GMRA which provide for set off following an Event of Default are contained in paragraph 10 (Event of Default) of the Agreement, and in particular sub-paragraphs (b) to (d) of GMRA 1995 and sub-paragraphs (b) to (f) of GMRA 2000.~~

~~4.2 — If an Event of Default has occurred, either because of an Act of Insolvency in respect of a party incorporated, established or formed in or with a branch in Thailand or following any other default by that party, the set off provisions of paragraph 10 of the GMRA would, subject as follows, be effective and the effect of those provisions would be that one party would be under a single obligation to pay a net amount in the Base Currency to the other party:~~

In general, the concept of set off is recognized under Thai law as follows:

Outside Insolvency

Under Sections 341 to 347 of the Thai Civil and Commercial Code (CCC), obligations can be netted or set off outside insolvency (bankruptcy or reorganization) when:

- (1) — the obligations that are the subject of the netting are of the same nature;
- (2) — both of the obligations are due;
- (3) — the netting is not contrary to the intentions of the parties as they appear in the documentation evidencing the obligations which are the subject of the netting; and
- (4) — there is no defence in relation to the claim raised by the party.

Netting is made by a declaration of intention by one party to the other. Notice by one party (the ***non-Defaulting Party***) of its intention to net to the other party should provide at least the following information in the notice:

- (i) — the obligations and amounts owed by the non-Defaulting Party to the other party; and
- (ii) — the obligations and amounts owed to the non-Defaulting Party by the other party.

The set off mechanism described in paragraph 10 of the GMRA is therefore, in general, consistent with the set off provisions under the CCC and the mechanism should therefore be effective outside of an insolvency.

Insolvency

~~Under Section 90/33 of the TBA, in a business reorganization, if a creditor who is entitled to apply for the repayment of its debt is also indebted to the debtor at the time of issue of the business reorganization order, the creditor may exercise a right of set off, unless such creditor acquires the claim against the debtor after the court issues the reorganization order. The obligations can be set off by a declaration of intention by the other party to the business reorganization plan preparer of the first party in the same manner as described in the foregoing paragraph. In the Central Bankruptcy Court Case Red No. 13/2542, the court ruled to the effect that, on a reorganization, the other party must submit a notice of its intention to net or set off under Section 90/33 prior to the issue of the court's order approving a reorganization plan. Under Section 90/56 of the TBA, once the creditors resolve to approve the business reorganization plan during a duly convened meeting, that resolution is reported by the Official Receiver to the court. Upon receiving the report, the court will set a hearing date for considering the business reorganization plan on an urgent basis. The court's approving order is normally issued within a range of one to two months after the date of the Official Receiver's report to the court, following completion of the steps leading up to such an order and depending on the complexity of the case. Any such notice would be required to be filed within that time period. There is not a prescribed form for the notice.~~

~~Under Section 102 of the TBA, in a receivership, if a creditor who is entitled to claim for repayment of its debt is also indebted to the debtor when a court makes a receivership order, even if the grounds for the indebtedness of the two parties are not the same or are subject to conditions or terms as to time, the debts can be set off, unless such creditor's rights of claim accrued after the relevant receivership order. The obligations can be set off by a declaration of intention by the other party to the Official Receiver of the first party. By analogy to the analysis adopted in the Central Bankruptcy Court Case referred to above, the netting or set off must be made prior to the court's issuing an order approving a composition. The court's composition order is normally issued within a range of seven to nine months of the date of the petition, following completion of the steps leading up to such an order and depending on the complexity of the case. Any such notice would be required to be filed within that time period. There is not a prescribed form for the notice.~~

~~We consider that the set off mechanism described in paragraph 10 of the GMRA, providing for the use of Default Market Values as of a time after a receivership order or reorganization order, should be treated as a method of calculating the creditor's loss arising on an acceleration of a liability under an existing obligation/cause of indebtedness following an event of default, and not that the net amount resulting from the set off mechanism would be treated as a new debt which did not exist at the time of the receivership or reorganization order. Accordingly, while there is no decision of the Supreme Court directly on point, the set off mechanism described in paragraph 10 of the GMRA should, subject to what follows, be given effect to by a court in an insolvency also.~~

~~The remainder of this Section 4.2 is concerned with an Event of Default arising in connection with a bankruptcy~~ [Please refer to Appendix 1, Part III.](#)

~~Under Section 98 of the TBA, if a debt claimed for repayment in a bankruptcy is prescribed in a foreign currency, it shall be calculated in Baht at the rate of exchange on the day of the court order (provisional or absolute) that the Official Receiver takes over the assets of the insolvent debtor.~~

~~Under the GMRA, upon the occurrence of an Event of Default, the Repurchase Date of each Transaction is deemed immediately to occur, and all Cash Margin and Equivalent Margin Securities are immediately deliverable. The Default Market Values of the Equivalent Securities and any Equivalent Margin Securities to be transferred and the amount of any Cash Margin and the Repurchase Price to be paid by each party is to be established by the non Defaulting Party for all Transactions **as at the Repurchase Date**. Default Market Values may be established as late as close of business on the second dealing day in the appropriate market after the day of the relevant Event of Default under GMRA 1995 or as late as close of business on the fifth dealing day in the appropriate market after the day of the relevant Event of Default (or the date on which the non Defaulting Party first became aware of the Event of Default) or, in certain circumstances, at some time thereafter under GMRA 2000. The Default Market Values are then set off against each other and a net amount is payable, after all sums not denominated in the Base Currency have been converted into the Base Currency **on the relevant date** at the Spot Rate prevailing at the relevant time.~~

~~Accordingly, we are concerned that the use of currency exchange rates determined at times after the date of the Receivership Order may be regarded by the court as contrary to the policy of Section 98 of the TBA. If so, the court would re-calculate the conversion in accordance with Section 98 of the TBA but the set-off itself would not be affected.~~

~~Subject to this, the conversion of any cash payment obligation into the Base Currency would be valid under the laws of Thailand and such a provision is not inconsistent with the public policy of Thailand~~

~~4.3 — Subject to the matters referred to elsewhere in this opinion in relation to transactions between principals, in particular Section 4.2 above, in the case of an Agency Transaction the provisions of paragraph 10 of the GMRA should apply, so that the netting is effected between the principal and the other party. The provisions of paragraph 10 of the GMRA should be effective as between the Agent in its capacity as agent for each Principal and the other party and should create an obligation on the part of the other party and the Principal to pay a single net amount in the Base Currency in respect of all transactions entered into under the GMRA between the other party and the Agent acting as agent for that Principal in isolation from other transactions between the other party and the Agent.~~

~~4.4 — Subject to the matters referred to elsewhere in this opinion in relation to the conversion of any cash payment obligation into the Base Currency, in particular to Sections 4.2 and 9.6, the conversion of any cash payment obligation into the Base Currency would be valid under the laws of Thailand and such a provision is not inconsistent with public policy of Thailand.~~

~~4.5 — The provisions of paragraph 10 of the GMRA would, subject to the matters referred to elsewhere in this opinion, be upheld notwithstanding that the Default Market Value may be calculated as late as close of business on the second dealing day in the appropriate market after the day of the relevant Event of Default under GMRA 1995 or as late as close of business on the fifth dealing day in the appropriate market after the day of the relevant Event of Default (or the date on which the non-Defaulting Party became aware of the Event of Default) or, in certain circumstances, at some time thereafter under GMRA 2000.~~

[4. GMRA Annexes, Core Provisions of the GMRA and Transactions entered into as Agent pursuant to the GMRA](#)

[Please refer to Appendix I, Parts IV - VI.](#)

5. Annexes

~~The use by the parties of any of the annexes, including the Annex recommended by the Thai Bond Dealing Centre, specified in the Appendix I to this opinion will not affect the substance of our opinion on the provisions of the GMRA and their effect under Thai law, nor will it affect the substance of our opinion on the validity of the GMRA as a whole under Thai law.~~ **6. — Location of securities**

~~6.15.1~~ [6.5.1](#) The substance of our opinion [on the GMRA](#) would not be affected if Purchased Securities or Margin Securities [or Margins comprising of Securities](#) are held outside Thailand.

~~6.25.2~~ [6.5.2](#) Under the laws of Thailand, if the transfer of Purchased Securities ~~or~~ [Margin Securities or Margins comprising of](#) Securities is made in accordance with the formalities required under the laws of Thailand, the transfer should be respected as an outright transfer and should not be recharacterised. Nevertheless, there is no court decision directly on point.

[7.6. Cross-Product Master Agreement \(CPMA\)](#)

Entry by the parties into a CPMA (as to the validity of which we express no opinion) will not affect the substance of our opinion on the provisions of the GMRA and their effect under Thai law, nor will it affect the

substance of our opinion on the validity of the GMRA as a whole under Thai law.

~~8. — Core Provisions~~

~~8.1 (a) We have been asked to identify any provisions of the GMRA that we regard as so essential to the GMRA that a material alteration thereof could affect the conclusions reached in Section 4 of this opinion (each such provision a **Core Provision** and together the **Core Provisions**).~~

~~(b) We have also been asked to confirm that any modification to any provision of the GMRA that is not a Core Provision (each such provision a **Modifiable Provision** and together the **Modifiable Provisions**) would not affect the conclusions reached in this opinion.~~

~~(c) We have also been asked to confirm that the conclusions reached in this opinion would not change as a result of the inclusion of additional provisions (**Additional Provisions**) in a schedule provided by an Annex to the GMRA. For the purposes of this Section 8 and Section 8.4, we assume that none of the Additional Provisions included would have the effect of modifying or affecting the operation or implementation of any Core Provision.~~

~~(d) We have also been asked to confirm that the alterations set forth in the Appendix 2 (the **Appendix 2 Alterations**) to Core Provisions, as identified below, of the GMRA 1995 and the GMRA 2000 would not change the conclusions reached in this opinion (for the avoidance of doubt we give no opinion as to the validity or enforceability of the items referred to in the Appendix 2 Alterations).~~

~~8.2 We believe that the following provisions contained in the GMRA are Core Provisions:~~

~~1995 version of the GMRA~~

~~◆ Paragraph 1(a) of the GMRA;~~

~~◆ Paragraph 3(c) and 3(f) of the GMRA;~~

~~◆ Paragraph 6(a), 6(e) and 6(f) of the GMRA;~~

~~◆ Paragraph 10(a), 10(b) and 10(c) of the GMRA;~~

~~◆ Paragraph 13 of the GMRA;~~

~~◆ Paragraph 17 of the GMRA;~~

~~◆ the definitions relating to the foregoing in paragraph 2 of the GMRA; and~~

~~◆ in the case of Agency Transactions, paragraphs 2, 5(a) and 5(b) (except sub paragraphs (i) and (ii) of Annex IV).~~

~~2000 version of the GMRA~~

~~◆ Paragraph 1(a) of the GMRA;~~

~~◆ Paragraph 3(c) and 3(f) of the GMRA;~~

~~◆ Paragraph 6(a), 6(e) and 6(f) of the GMRA;~~

- ~~◆ Paragraph 10(a), 10(b), 10(c) and 10(d) of the GMRA;~~
- ~~◆ Paragraph 13 of the GMRA;~~
- ~~◆ Paragraph 17 of the GMRA;~~
- ~~◆ the definitions relating to the foregoing in paragraph 2 of the GMRA; and~~
- ~~◆ in the case of Agency Transactions, paragraphs 2(a), 4(a) and 4(b) (except sub-paragraphs (i) and (ii) of the Agency Annex and, in the case of multiple principals, paragraphs 2(a)(i), 3, 4(a), 4(b)5, 6(a), 6(c) and 6(d) of the Addendum to Agency Annex for multiple principal transactions).~~

~~8.3 We believe that modifications to any Modifiable Provisions would not affect the conclusions reached in this opinion so long as any such modification would not have the effect of modifying or affecting the operation or implementation of any Core Provision.~~

~~8.4 We believe that the conclusions reached in this opinion would not change because of the inclusion of Additional Provisions in Annex I to the GMRA subject to the assumption in Section 8.1(c) above.~~

~~8.5 We believe that the Appendix 2 Alterations or any similar alteration to a Core Provision, as identified above, of the GMRA would not change the conclusions reached in this opinion (for the avoidance of doubt we give no opinion as to the validity or enforceability of the items referred to in Appendix 2 and assume that none of the Appendix 2 Alterations invalidates or adversely affects the binding effect of any Core Provision).~~

~~9. Other matters~~

~~9.1 On the assumption that under English law the unenforceability or illegality of a provision of the GMRA would not undermine the efficacy of the remainder of the GMRA generally or of paragraph 10 of the GMRA in particular, the unenforceability or illegality of any other provision of the GMRA would not undermine the efficacy of the remainder of the GMRA or of paragraph 10 of the GMRA in particular under Thai law.~~

~~9.2 In general, the GMRA may be used by any party with any other party wherever either is incorporated. However, this opinion relates only to partnerships and companies incorporated or organized in Thailand or branches of companies incorporated or organized outside Thailand located or established in Thailand.~~

7. Legal Form and Capacity of Certain Counterparties and Modification in Application of Opinion

7.1 Legal Form

(a) Insurance Companies: like other companies, all insurance companies in Thailand are formed as either private companies under the CCC or as public companies under the Public Limited Company Act. The operations of life insurance companies and non-life insurance companies are regulated under the Life Insurance Act and Non-Life Insurance Act, respectively. A company must have a license issued by the Commerce Minister before engaging in an insurance business.

(b) As for partnerships, a partnership has capacity to enter into the GMRA, subject to (i) its registered objectives and partnership agreement containing a power and authority to enter into the GMRA (or transactions of the same type contemplated under the GMRA), (ii) the restrictions, if any, imposed upon the powers of the managing partner(s) to bind the partnership and (iii) the managing partner(s) having validly exercised its powers in entering into the GMRA (or transactions of the same type contemplated under the GMRA).

(c) As for companies, an ordinary company has capacity to enter into the GMRA, subject to its registered objectives and articles of association containing a power and authority to enter into the GMRA (or transactions of the same type contemplated under the GMRA) and not containing any express restriction thereon.

(d) Under Thai law, certain institutions are regulated and their ability to enter into the GMRA may be restricted.

For example, a Circular Letter of the Bank of Thailand, No. Thor. Por. Thor. Sor. Nor. Sor. (11) Wor. 3491/2543 (25 December 2000) provides, among other things, that credit foncier companies cannot borrow money through repo transactions from non-financial institutions.

In general, finance companies are also subject to a similar restriction. A Notification of the Bank of Thailand Re: the Operation of Private Repo Transactions of Finance Companies dated 1 November 2001 and a Notification of the Bank of Thailand Re: Prescription for Procedures for Compliance by Finance Companies in Borrowing Money from Institutional Investors through Private Repo dated 28 December 2001 provide, amongst other things, that finance companies cannot borrow money from non-financial institutions (other than mutual funds, private funds or provident funds under supervision of the Thai Securities and Exchange Commission, government pension funds, the Social Security Office, financial institutions established by a specific law for a specific purpose and life and non-life insurance companies) through repo transactions but, in sharp contrast with credit foncier companies, they can lend funds through repo transactions.

Any repo transaction into which finance companies or credit foncier companies enter must relate to certain instruments denominated in Baht and use the standard form of repurchase agreement approved by the Securities and Exchange Commission.

(e) As for commercial banks, a Notification of the Bank of Thailand Re: Granting of Approval for the Operation of Private Repo Transactions of Commercial Banks dated 9 September 2004 provides, among other things, that commercial banks can borrow or lend money through repo transactions which relate to instruments denominated in foreign currency only with persons residing outside Thailand or financial institutions being entitled to carry on business relating to foreign means of payment pursuant to the Exchange Control Act B.E. 2485.

(f) As regards securities companies, a Notification of the Office of Securities and Exchange Commission No. OrTor/Nor. 11/2546 dated 7 October 2003 provides, amongst other things, that a securities company can only engage in a repurchase transaction (whether as the Seller or the Buyer) with qualified institutional investors residing in Thailand.

~~As regards private funds and provident funds, the applicable notifications of the Securities and Exchange Commission provide, among other things, that private funds and provident funds cannot borrow funds but can lend funds through~~(g) As regards the Bank of Thailand, the Bank of Thailand may engage in certain businesses permitted, and not prohibited, under the Bank of Thailand Act and other relevant laws and regulations, including a Royal Decree prescribing the Activities of the Bank of Thailand B.E. 2485. A Regulation of the Bank of Thailand regarding Repurchase Transactions of Debt Instruments B.E. 2549 dated 27 April 2006 (effective from 15 May 2006) provides, amongst other things, that the Bank of Thailand may enter into a repurchase transaction ~~but must use the standard form of repurchase agreement approved by Thai Bond Dealing Center or the Securities and Exchange Commission of "Debt Instruments" with "Members" for any of the follow periods: 1 day, 7 days, 14 days, 1 month, 2 months, 3 months and 6 months.~~

~~As regards mutual funds, the applicable notifications of the Securities and Exchange Commission provide, among other things, that mutual funds can lend funds through a repurchase transaction but specifically permit~~

~~open ended mutual funds to borrow funds through a repurchase transaction only for the purpose of liquidity management provided they use the standard form of repurchase agreement approved by the Securities and Exchange Commission.~~

For such purpose, the term “Debt Instrument” is defined as debt instruments as prescribed by the Bank of Thailand, i.e. treasury bills, bills of exchange for debt restructuring, government bonds, Bank of Thailand bonds and bonds or debentures issued by government organizations or state enterprises or financial institutions established under specific Thai laws where (1) the Bank of Thailand acts as a registrar and as settlement agent, and (2) debt instruments are underlying instruments in repurchase agreements that “Members” assign the Bank of Thailand to be a custodian by depositing such debt instruments in the account at the Securities Depository.

The term “Member” is defined as (1) Thai commercial banks in accordance with Thai laws governing commercial banks, (2) Thai finance companies and credit foncier companies in accordance with Thai laws governing financial business, securities business and credit foncier business, and (3) other Thai financial institutions and state enterprises prescribed by the Bank of Thailand. The Bank of Thailand is not authorised to enter into such transactions with persons other than Members, which would preclude it entering into such transactions with persons outside of Thailand. Pursuant to such Regulation of the Bank of Thailand, on the repurchase date Members are required to repurchase the Debt Instruments by paying an amount equal to the sum of trading amount, fees and returns, which are agreed and confirmed with the Bank of Thailand within the time prescribed by the Bank of Thailand. If any Member selling a Debt Instruments fails to maintain adequate moneys in the account for the settlement of the repurchase transaction by the Bank of Thailand, then, the seller’s right to repurchase such Debt Instruments will be terminated.

Currently, the use of GMRA 2000 and the Thailand Annex is recommended by the Thai Bond Market Association and has been approved by the Securities and Exchange Commission.

(h) Funds:

- (i) Mutual Funds:** a mutual fund is required to be registered with the Office of the Securities and Exchange Commission and will only have legal status and be recognised as a separate legal person when so registered. A mutual fund is required to be managed by a licensed securities company and has the same nationality as the securities company responsible for its management.
- (ii) Private Funds:** A private fund is a fund of a person or group of persons who have nominated a licensed securities company to make investments in securities on its (or their) behalf. Although required to be registered with the Office of the Securities and Exchange Commission, a private fund is only a fund, and is not recognized as separate legal person.
- (iii) Provident Funds:** A provident fund is a fund established by an employer for its employees which is required to be set up and registered under the Provident Fund Act. A provident fund consists of savings made by the employees, contributions made by the employer. Once a provident fund is registered under the Provident Fund Act, it will be recognized as a separate legal person.
- (iv) Government Pension Fund:** The government pension fund is established and formed under Government Pension Fund Act for the purposes of (i) payment of pensions, benefits and compensation to government officials after retirement.

(ii) promotion of members' saving, and (iii) provision of welfare and other benefits to its members. Pursuant to the Government Pension Fund, the government pension fund is recognized as a separate legal person.

(i) Hedge Funds: Currently, hedge funds do not have any legal status recognized under the Securities and Exchange Act or any other Thai law.

7.2 Restricted Businesses

(a) Insurance companies: As regards life and non-life insurance companies, two notifications of the Ministry of Commerce Re: Investment for Operation of Other Businesses by a life and non-life insurance company dated 20 October 2004 and 17 November 2004, respectively, provide, amongst other things, that life and non-life insurance companies can only engage in a repurchase transaction (whether as the Seller or the Buyer) with qualified institutional investors (whether or not residing in Thailand). Any such repurchase transaction must be for a period not exceeding one year, must be denominated in Thai Baht and must use the standard form of repurchase agreement approved by the Securities and Exchange Commission.

(b) Funds:

(i) As regards mutual funds, the applicable notifications of the Securities and Exchange Commission provide, among other things, that mutual funds can lend funds through a repurchase transaction but specifically permit open-ended mutual funds to borrow funds through a repurchase transaction only for the purpose of liquidity management provided they use the standard form of repurchase agreement approved by the Securities and Exchange Commission.

(ii) As regards private funds and provident funds, the applicable notifications of the Securities and Exchange Commission provide, among other things, that private funds and provident funds cannot borrow funds but can lend funds through a repurchase transaction but must use the standard form of repurchase agreement approved by Thai Bond Market Association or the Securities and Exchange Commission.

(iii) As regards pension funds and, in particular, the Government Pension Fund, the Ministry of Finance has issued ministerial regulation dated 29 January 2003 empowering the Government Pension Fund to engage in a repurchase transaction (whether as a Seller or Buyer) in relation to certain types of securities as prescribed by the Committee of the Government Pension Fund. To date, the Committee has not prescribed the types of securities which can be subject to a repurchase transaction entered into by the Government Pension Fund.

~~Currently, the use of GMRA 2000 and the Thailand Annex is recommended by the Thai Bond Dealing Center and has been approved by the Securities and Exchange Commission~~

8. Other matters

8.1 On the assumption that under English law the unenforceability or illegality of a provision of the GMRA would not undermine the efficacy of the remainder of the GMRA generally or of GMRA Netting Provisions in particular, the unenforceability or illegality of any other provision of the GMRA would not undermine the efficacy of the remainder of the GMRA or of the GMRA Netting Provisions in particular under Thai law.

8.2 In general, the GMRA may be used by any party with any other party wherever either is incorporated. However, this opinion relates only to Thailand Parties.

~~9.38.3~~ The ~~provisions of paragraph 10 of the~~ GMRA Netting Provisions would, subject to our comments below, be enforceable in all Insolvency Proceedings, including non-liquidation insolvency.

Under Thai law, on an insolvency, transactions under the GMRA and the enforcement of ~~paragraph 10 of~~ the GMRA Netting Provisions may be subject to challenge on two grounds.

Fraudulent transactions

Under Section 113 of the TBA (applicable on a bankruptcy) and Section 90/40 of the TBA (applicable on a reorganization) a transaction may be set aside by a court on the application of the Official Receiver, planner or plan administrator of the insolvent debtor (the **Debtor**) if it involves a fraudulent act on the part of the Debtor.

A fraudulent act is an act done by the Debtor with knowledge that it would prejudice its creditors: however, it does not apply if the person enriched by the act (the **counterparty**) did not know, at the time of the act, of the facts which would make it prejudicial to creditors: provided that in the case of a gratuitous act, knowledge on the part of the Debtor alone is sufficient. The counterparty and the Debtor are presumed to know that a transaction will be prejudicial to creditors of the Debtor if (i) the transaction is entered into within a period of one year before, and also after, an application for the bankruptcy or reorganization of the Debtor, or (ii) if any transfer of property pursuant to the transaction is made (a) for no consideration, or (b) at an inappropriate price. However, this presumption is rebuttable by the Debtor and the counterparty.

Under Section 237 of the CCC, an individual creditor is also entitled to claim cancellation of any transaction done by a Debtor with knowledge that it would prejudice its creditor by filing a motion with a Thai court. It is able to do this if insolvency proceedings have not been commenced against the Debtor. In this case, the creditor must prove that the Debtor and the counterparty knew that the transaction would prejudice it, unless the transaction is a gratuitous one, when the knowledge of the Debtor is sufficient. To succeed in such a claim, the creditor will have to demonstrate that the Debtor is insolvent. None of the presumptions in the preceding paragraph apply.

An application to a court under these sections must be made by the earlier of (i) one year after the person making the application learned of the relevant transaction, and (ii) ten years of the date of the transaction.

These sections may apply to repurchase transactions in two situations:

- (a) Initial Transaction: on the first leg of the transaction, the Purchased Securities will be sold by the Seller to the Buyer. However, the Purchase Price may well not be the market price of the securities, because the Purchaser may apply a "hair cut" to provide cover for movements in market prices. The transaction is, therefore, at or below market price, and so possibly open to attack under Section 90/40 or Section 113 of the TBA or Section 237 of the CCC.

In defence of the transaction it would be argued that, while the Purchase Price may be at below market value, the Repurchase Price is also set at a correspondingly low figure and accordingly, while the Seller has disposed of securities at a below-market price, it has the right to re-acquire them at the same low price, adjusted only to reflect the interest cost of the transaction. While we think this is a persuasive argument, in the absence of court precedents we cannot opine on whether this argument would be successful.

- (b) Margin Transfers: on a Margin Transfer securities are transferred for no consideration, other

than that (i) the Buyer or Seller has a pre-existing obligation to do so, and (ii) the Buyer or Seller has the right to have Equivalent Margin Securities transferred to it on the Repurchase Date for correspondingly no consideration. We are concerned that a Thai court may consider that this may amount to a transfer for no consideration under which knowledge on the part of the counterparty that the Margin Transfer would prejudice other creditors of the Debtor is not required. Accordingly, we consider that it is more likely that a challenge to such a transaction as a fraudulent act would be successful. We doubt that the position is improved by repricing, since the payment of an amount by the insolvent Debtor on a repricing could be challenged on the same basis.

Preferences

Under Section 115 of the TBA (applicable on a bankruptcy) and Section 90/41 of the TBA (applicable on a reorganization) "any transfer of asset or any act" done or permitted to be done by the Debtor can be set aside if it was done or permitted to be done by the Debtor within three months before, and also after, an application for its bankruptcy or reorganization with the intention to give one creditor preference over other creditors.

This period may be extended to one year in the case of transactions with "insiders" – which include directors and holders of more than 5% of the shares of the Debtor. The burden of proof is with the person seeking to set the transaction aside.

An application to a court under Section 115 and Section 90/41 must be made within ten years of the date of the transaction.

Unless there are other dealings between the parties, these preference sections of the TBA should not apply to the Initial Transaction, as at that time the Purchaser is not a creditor of the Seller. If there are other dealings between the parties, these preference sections should not apply to the Initial Transaction unless the Debtor, through entering into the transaction, had an intention to prefer the counterparty over its other creditors. These preference sections would be more likely to apply to Margin Transfers.

A transaction may be treated as a preference if at the time the Debtor entered into the relevant transaction it knew that it did not have sufficient assets to meet its liabilities. If, at the time an insolvent Debtor carried out the Margin Transfer it knew it did not have sufficient assets to meet its liabilities, and the Official Receiver or other insolvency official can show that the transfer was carried out with a view to preferring the counterparty, a court may set the transaction aside, as it may set aside any transaction which it can demonstrate satisfies this criterion. We do not think the position is improved by using repricing as the insolvent Debtor will still be making a payment, which falls within the scope of actions subject to challenge under these preference sections.

Accordingly, while the set off itself under ~~paragraph 10 of~~ the GMRA Netting Provisions would not be treated as a fraudulent transaction or a preference, it is possible that some of the transactions which put the Parties in a position to set off under ~~paragraph 10 of~~ the GMRA Netting Provisions may be subject to being set aside in Insolvency Proceedings on the grounds of fraudulent act or preference.

9.48.4 There is no necessity for the set off effected under ~~paragraph 10 of~~ the GMRA Netting Provisions to be reflected in the records of the parties for it to be effective and no other action is required including, without limitation, any filing or registration, for the set off to be effective.

9.58.5 Under the laws of Thailand, it is not necessary for the efficacy of ~~paragraph 10 of~~ the GMRA Netting Provisions that all transactions should be treated as a single agreement.

- ~~9.68.6~~ The use of the GMRA with branches of a party in a number of jurisdictions, including one where the legal basis for set off is not clear, would not jeopardize the validity of ~~paragraph 10 of~~ the GMRA Netting Provisions in respect of a party incorporated or organized in or with a branch in Thailand.
- ~~9.78.7~~ The ~~provisions of paragraph 10 of the~~ GMRA Netting Provisions would be enforceable in Thailand notwithstanding that actions may be taken by insolvency officials in other jurisdictions.
- ~~9.88.8~~ We have no reason to believe that the GMRA would be unenforceable because of the law of any other jurisdiction.
- ~~9.98.9~~ With the exception of an Event of Default which is the presentation of a petition for winding-up or any analogous proceeding, or the appointment of a liquidator or any analogous officer of the Defaulting Party, the close-out and set off provisions of ~~paragraph 10 of~~ the GMRA Netting Provisions are at the option of the non-Defaulting party. We do not consider that in the case of an Event of Default consisting of the making of a temporary or final order for the control of property on the bankruptcy of a Party the ~~provisions of paragraph 10~~ GMRA Netting Provisions would be more likely to be upheld if their operation were automatic. The discretion and flexibility given to the non-Defaulting party under ~~paragraph 10 of~~ the GMRA Netting Provisions do not affect the validity of the close-out and set off provisions of ~~that clause~~ the GMRA Netting Provisions.

~~10. — Transactions entered into as agent~~

~~A court in Thailand would uphold the provisions of the Agency Annex in accordance with their terms.~~

11.2 Qualifications

- ~~11.19.1~~ The term "enforceable" as used in this opinion means that the obligations assumed by the relevant party under the relevant document are of the type which the relevant court will enforce. This opinion is not to be taken to imply that any obligation would necessarily be enforceable in all circumstances in accordance with its terms. In particular:
- (i) the issuance of an order by the courts of Thailand requiring a party to perform an obligation under a contract or to refrain from committing a breach of any such obligation is within the discretion of the court;
 - (ii) any power, authority or appointment expressed in the GMRA or otherwise to be irrevocable is not by such expression made irrevocable, and any revocation may result only in a claim for damages;
 - (iii) claims may become barred under applicable statutes of limitations, within which suits, actions or proceedings can be brought (for example, under Book I, Title VI, Chapter II of the CCC) or may be or become subject to the defence of set off or to counterclaim;
 - (iv) where obligations are to be performed in a jurisdiction outside Thailand, they may not be enforceable to the extent that performance would be illegal under the laws, or contrary to the exchange control regulations, of the other jurisdiction; and
 - (v) the enforcement of obligations may be limited by the provisions of relevant law applicable to agreements held to have been frustrated by events happening after their execution.
- ~~11.29.2~~ Any judgement or order obtained from a foreign court would not be enforced as such by the courts of Thailand, but such judgement or order may in the discretion of the courts of Thailand be admitted as evidence of an obligation in new proceedings instituted in the courts of Thailand, which would judge the issue on the evidence before it.

~~11.39.3~~ A certificate, determination, discretion, notification, opinion or the like might be held by the courts not to be final, conclusive or binding if it could be shown to have an unreasonable or arbitrary basis or not to have been reached in good faith or in the event of manifest error, despite any provision in the GMRA to the contrary.

~~11.49.4~~ In any proceedings in a Thai court a Thai translation may be required as a condition to the admissibility in evidence of any document produced in a foreign language in a Thai court.

~~11.59.5~~ According to Section 118 of the Revenue Code of Thailand, a condition of admissibility into evidence of any agreement is that stamps have been properly affixed thereto or the relevant duty has otherwise been paid. The transfer of debentures and shares traded on the Stock Exchange of Thailand is exempt from stamp duty.

~~11.69.6~~ Any ~~judgement~~judgment or order given in the courts of Thailand for the enforcement of the GMRA, within the discretion of the courts of Thailand, may be expressed either in Baht or in the appropriate foreign currency. Under Section 196 of the CCC, where a money debt is expressed in a foreign currency, payment may be made in Thai currency, conversion being based on the rate of exchange current in the place of payment at the time of payment: it is uncertain if this provision may be validly waived. The Supreme Court has held that if an award is given in Baht, then the relevant conversion rate is the average of the selling rates of commercial banks on the date of ~~judgement~~judgment, or if there is no such average rate, then the last available such rate prior to such date. We express no opinion on any provision comprising a ~~judgement~~judgment currency indemnity contained in the GMRA.

~~11.79.7~~ The power to award statutory legal fees and court costs is within the discretion of the Thai courts according to the rates prescribed in the Thai Civil and Procedure Code. Any agreement to the contrary is unenforceable.

~~11.89.8~~ Under Section 224 of the CCC, interest for default shall not be paid on interest. There is a risk that the court may regard interest payable under paragraph 12 of the GMRA as a penalty. If it is regarded as a penalty it can be reduced at the court's discretion if it is found that the penalty is disproportionately high.

Under paragraph 10(c) of the GMRA, on the termination of a Transaction if the Seller fails to deliver Purchased Securities to the Buyer, the Seller shall pay to the Buyer an amount equal to the excess of the Repurchase Price at the date of termination over the Purchase Price. The amount of this payment takes no account of any revenue which the Buyer may have been able to derive from the use of the funds if it has not paid the Purchase Price, and accordingly may be regarded as a penalty subject to reduction at the discretion of the court if found to be disproportionately high.

~~11.99.9~~ While we have no reason to believe that the method of determining the "Default Market Value" as specified in paragraph 10(e) of the GMRA will not be upheld by a Thai court, the non-Defaulting Party would, however, be required to act in good faith when determining the "Net Value" as contemplated in paragraph 10(e)(i)(C)(bb) and paragraph 10(e)(ii) of the GMRA. These paragraphs may however face particular difficulties in enforcement in practice as the Defaulting Party may attempt to argue that the non-Defaulting Party does not act in good faith in determining the "Net Value" or the opinion of the non-Defaulting Party in calculating "Net Value" was not reasonable.

~~11.109.10~~ The validity of a Special Default Notice is doubtful under Thai law. In particular, where one party attempts to send a notice to the other party (by means other than a registered mail to the address given by the other party) but is unable to serve the notice, the notice would not have been duly delivered to the other party under Thai law by the mere execution of the Special Default Notice.

~~11.119.11~~ A waiver of rights or benefits is not effective under the laws of Thailand if contrary to public order or in circumstances where the beneficiary of such waiver has been grossly negligent or

fraudulent. Therefore, the enforceability of paragraphs 10(g) and (h) under GMRA 1995, or paragraphs 10(i) and (j) under GMRA 2000 is uncertain if the beneficiary of these provisions has been grossly negligent or fraudulent.

~~11.129.12~~ If the Thai court considers the GMRA to be a standard form contract under the Unfair Contract Terms Act B.E. 2540, any provision in the GMRA which gives one party an inappropriate advantage over the other party may be regarded by the Thai court to be an unfair provision and may lead to the result that the unfair provision is enforceable only to the extent that it is held to be fair and reasonable. However, we are of the opinion that no provision of the GMRA would be considered to give one party an inappropriate advantage over the other party.

~~11.139.13~~ According to Section 827 of the CCC, a principal may revoke his authority and the agent may renounce the agency at any time. However the extinction of agency cannot be set up against a third person acting in good faith, unless the third person is ignorant of the fact through his own negligence.

~~11.149.14~~ Under Section 93 of the Civil Procedure Code, an original executed agreement (including a Confirmation) only will be admissible as evidence to Thai courts. However, in the case where the original document is missing, owing to loss or destruction by force majeure, or it is otherwise impossible to produce it, the Thai court may allow the production of a copy or oral evidence. It is therefore uncertain whether the court will admit a copy as evidence.

~~11.159.15~~ Under Section 100 of the TBA, interest or other charge in lieu of interest after the date when the court issues a receivership order (whether absolute or temporary) would not be recoverable against the bankrupt party.

~~11.169.16~~ Approval of the Bank of Thailand may be required in connection with the purchase and/or remittance outside Thailand of any Contractual Currency and/or Base Currency which is denominated in a currency other than Thai Baht.

~~11.179.17~~ Insofar as the opinions expressed herein refer to the law or laws of Thailand, such references include Royal Decrees, Ministerial Decrees, Ministerial Regulations and Notifications and Supreme Court ~~judgements~~judgments and are limited to those which are published and available to the public as of the date hereof. Nothing has come to our attention indicating that any unpublished laws or Supreme Court ~~judgements~~judgments exist which would affect any of the opinions expressed herein.

There are no other material issues relevant to the issues raised by this opinion which we wish to draw to your attention.

~~This opinion is~~ The Core Opinion and Appendix 1 are given for the sole benefit of ICMA and its members ~~of~~and associate members (including branches of those members ~~of~~and associate members or, where the member or associate member is itself a branch, the head office). The Core Opinion and Appendix 1 may not be relied upon by any other person without our prior written consent. Without limiting the foregoing, you may provide a copy of this opinion to any competent regulatory authority including the UK Financial Services Authority and the German Bundesanstalt für Finanzdienstleistungsaufsicht; however this opinion is not addressed to such regulatory authority and may not be relied upon by them.

Yours faithfully,

Hunton & Williams (Thailand) Limited

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APPENDIX 1

Part I:

List of annexes

GMRA 1995	GMRA 2000
• Buy/Sell Back Annex	• Buy/Sell Back Annex
• Agency Annex	• Agency Annex
• Bills of Exchange Annex	• Bills of Exchange Annex
• EMU Annex	• Equities Annex
• Equities Annex	• Gilts Annex
• Gilts Annex	• Italian Annex
• Net Paying Securities Annex	• Canadian <u>Japanese Securities</u> Annex
• Italian Annex	• Japanese Securities <u>Canadian</u> Annex
• Japanese Securities Annex	• Thailand Annex

Part II:

Validity of the GMRA

1. The GMRA will be legal, valid, binding and enforceable under the laws of Thailand and will take effect in accordance with its terms.

However, an agreement for the sale of movable property for a price of Baht 20,000 or more may not be enforceable unless there is written evidence signed by the party liable or "earnestness" is given or there is part performance. Accordingly, a Transaction may not be enforceable unless these requirements are fulfilled.

We consider that the execution of the GMRA by both parties together with part performance by either party or written confirmation (which includes (i) a fax signed by the party liable and (ii) electronic data (such as telex, telegraph and electronic mail) affixed with electronic signature of the party liable in accordance with the Electronic Transactions Act B.E 2544 (2001)) satisfies this requirement.

2. A court in Thailand would uphold the choice of English law as a valid choice of law to govern the GMRA, but only to the extent that such law is: (i) proved to the satisfaction of the court (which satisfaction is within the discretion of the court), and (ii) not considered contrary to the public order or good morals of the people of Thailand. The scope of the public order or good morals of the people of Thailand has not been definitely established. However, except as set out in this opinion, we are not aware of anything in the GMRA which would be contrary to the public order or good morals of the people of Thailand.

There is no basis under Thai law for submission to the jurisdiction of a court outside Thailand and, accordingly, the validity and binding effect of the submission by any person to the non exclusive jurisdiction of foreign courts is uncertain.

3. Without limiting paragraph 1 above, Transactions entered into under the GMRA (whether a Repurchase Transaction or a Buy/Sell Back Transaction) should, assuming the formalities for the transfer of title to the Purchased Securities are carried out in accordance with applicable law, take effect as a transfer of absolute title in the Purchased Securities from the Seller to the Buyer, and the

Buyer should have only a contractual obligation to transfer Equivalent Securities on the Repurchase Date. We do not think that a court in Thailand would recharacterise the arrangements and think it would honour the terms of the GMRA, although there is no decision of the Supreme Court directly on point.

Section 16 of the Conflict of Laws Act B.E. 2481 provides to the effect that the law of the place where the property is situated governs movable and immovable property. In other words, the applicable law governing the formalities for transfer of title to the securities is the *lex situs* of the securities.

4. Similar to initial transfers, the transfer of cash and securities by way of Margin pursuant to paragraph 4 of the GMRA should be recognized by a court in Thailand as a transfer of absolute title in the assets transferred with an obligation on the transferee to repay Cash Margin or deliver Equivalent Margin Securities as appropriate. We do not think that a court in Thailand would seek to upset or recharacterise transfers made pursuant to paragraph 4 of the GMRA, although, as stated in Section 3. above, there is no decision of the Supreme Court directly on point.
5. A court in Thailand should uphold the alternative margin methods provided for in paragraphs 4(i), (j) and (k) of the GMRA, provided that the enforceability requirements referred to in Section 1. above are satisfied in relation to a Replacement Transaction.

Part III: GMRA Netting Provisions

1. The central provisions of the GMRA which provide for set off following an Event of Default are contained in paragraph 10 (Event of Default) of the Agreement, and in particular sub-paragraphs (b) to (d) of GMRA 1995 and sub-paragraphs (b) to (f) of GMRA 2000, together the GMRA Netting Provisions.
2. If an Event of Default has occurred, either because of an Act of Insolvency in respect of a party incorporated, established or formed in or with a branch in Thailand or following any other default by that party, the GMRA Netting Provisions would, subject as follows, be effective and the effect of those provisions would be that one party would be under a single obligation to pay a net amount in the Base Currency to the other party.

In general, the concept of set off is recognized under Thai law as follows:

Outside Insolvency

Under Sections 341 to 347 of the Thai Civil and Commercial Code (*CCC*), obligations can be netted or set off outside insolvency (bankruptcy or reorganization) when:

- (1) the obligations that are the subject of the netting are of the same nature;
- (2) both of the obligations are due;
- (3) the netting is not contrary to the intentions of the parties as they appear in the documentation evidencing the obligations which are the subject of the netting; and
- (4) there is no defence in relation to the claim raised by the party.

Netting is made by a declaration of intention by one party to the other. Notice by one party (the *non-Defaulting Party*) of its intention to net to the other party should provide at least the following information in the notice:

- (i) the obligations and amounts owed by the non-Defaulting Party to the other party; and
- (ii) the obligations and amounts owed to the non-Defaulting Party by the other party.

The set off mechanism described in [the GMRA Netting Provisions](#) is therefore, in general, consistent with the set off provisions under the CCC and the mechanism should therefore be effective outside of an insolvency.

Insolvency

Under Section 90/33 of the TBA, in a business reorganization, if a creditor who is entitled to apply for the repayment of its debt is also indebted to the debtor at the time of issue of the business reorganization order, the creditor may exercise a right of set off, unless such creditor acquires the claim against the debtor after the court issues the reorganization order. The obligations can be set off by a declaration of intention by the other party to the business reorganization plan preparer of the first party in the same manner as described in the foregoing paragraph. In the Central Bankruptcy Court Case Red No. 13/2542, the court ruled to the effect that, on a reorganization, the other party must submit a notice of its intention to net or set off under Section 90/33 prior to the issue of the court's order approving a reorganization plan. Under Section 90/56 of the TBA, once the creditors resolve to approve the business reorganization plan during a duly convened meeting, that resolution is reported by the Official Receiver to the court. Upon receiving the report, the court will set a hearing date for considering the business reorganization plan on an urgent basis. The court's approving order is normally issued within a range of one to two months after the date of the Official Receiver's report to the court, following completion of the steps leading up to such an order and depending on the complexity of the case. Any such notice would be required to be filed within that time period. There is not a prescribed form for the notice.

Under Section 102 of the TBA, in a receivership, if a creditor who is entitled to claim for repayment of its debt is also indebted to the debtor when a court makes a receivership order, even if the grounds for the indebtedness of the two parties are not the same or are subject to conditions or terms as to time, the debts can be set off, unless such creditor's rights of claim accrued after the relevant receivership order. The obligations can be set off by a declaration of intention by the other party to the Official Receiver of the first party. By analogy to the analysis adopted in the Central Bankruptcy Court Case referred to above, the netting or set off must be made prior to the court's issuing an order approving a composition. The court's composition order is normally issued within a range of seven to nine months of the date of the petition, following completion of the steps leading up to such an order and depending on the complexity of the case. Any such notice would be required to be filed within that time period. There is not a prescribed form for the notice.

We consider that the set off mechanism described in [GMRA Netting Provisions](#), providing for the use of Default Market Values as of a time after a receivership order or reorganization order, should be treated as a method of calculating the creditor's loss arising on an acceleration of a liability under an existing obligation/cause of indebtedness following an event of default, and not that the net amount resulting from the set off mechanism would be treated as a new debt which did not exist at the time of the receivership or reorganization order. Accordingly, while there is no decision of the Supreme Court directly on point, the set off mechanism described in [GMRA Netting Provisions](#) should, subject to what follows, be given effect to by a court in an insolvency also.

The remainder of this Section [2](#) is concerned with an Event of Default arising in connection with a [bankruptcy](#).

Under Section 98 of the TBA, if a debt claimed for repayment in a bankruptcy is prescribed in a foreign currency, it shall be calculated in Baht at the rate of exchange on the day of the court order (provisional or absolute) that the Official Receiver takes over the assets of the insolvent debtor.

Under the GMRA, upon the occurrence of an Event of Default, the Repurchase Date of each Transaction is deemed immediately to occur, and all Cash Margin and Equivalent Margin Securities are immediately deliverable. The Default Market Values of the Equivalent Securities and any Equivalent Margin Securities to be transferred and the amount of any Cash Margin and the Repurchase Price to be paid by each party is to be established by the non-Defaulting Party for all Transactions *as at the Repurchase Date*. Default Market Values may be established as late as close of business on the second dealing day in the appropriate market after the day of the relevant Event of Default under GMRA 1995 or as late as close of business on the fifth dealing day in the appropriate market after the day of the relevant Event of Default (or the date on which the non-Defaulting Party first became aware of the Event of Default) or, in certain circumstances, at some time thereafter under GMRA 2000. The Default Market Values are then set off against each other and a net amount is payable, after all sums not denominated in the Base Currency have been converted into the Base Currency *on the relevant date* at the Spot Rate prevailing at the relevant time.

Accordingly, we are concerned that the use of currency exchange rates determined at times after the date of the Receivership Order may be regarded by the court as contrary to the policy of Section 98 of the TBA. If so, the court would re-calculate the conversion in accordance with Section 98 of the TBA but the set off itself would not be affected.

Subject to this, the conversion of any cash payment obligation into the Base Currency would be valid under the laws of Thailand and such a provision is not inconsistent with the public policy of Thailand

3. Subject to the matters referred to elsewhere in this opinion in relation to transactions between principals, in particular Section 2 above, in the case of an Agency Transaction entered into (i) with respect to the GMRA 1995, as specified in Annex IV thereto; (ii) with respect to the GMRA 2000, as specified in the Agency Annex thereto, the GMRA Netting Provisions should apply, so that the netting is effected between the principal and the other party. The GMRA Netting Provisions should be effective as between the Agent in its capacity as agent for each Principal and the other party and should create an obligation on the part of the other party and the Principal to pay a single net amount in the Base Currency in respect of all transactions entered into under the GMRA between the other party and the Agent acting as agent for that Principal in isolation from other transactions between the other party and the Agent.
4. Subject to the matters referred to elsewhere in this opinion in relation to the conversion of any cash payment obligation into the Base Currency, in particular to Sections 2 and 8.6, the conversion of any cash payment obligation into the Base Currency would be valid under the laws of Thailand and such a provision is not inconsistent with public policy of Thailand.
5. The GMRA Netting Provisions would, subject to the matters referred to elsewhere in this opinion, be upheld notwithstanding that the Default Market Value may be calculated as late as (i) close of business on the second dealing day in the appropriate market after the day of the relevant Event of Default under GMRA 1995, or (ii) with respect to the GMRA 2000, as late as close of business on the fifth dealing day in the appropriate market after the day of the relevant Event of Default (or the date on which the non-Defaulting Party became aware of the Event of Default) or, in certain circumstances, at some time thereafter under GMRA 2000.

Part IV: GMRA Annexes

The use by the parties of any of the annexes, including the Annex recommended by the Thai Bond Market Association, specified in Appendix 1 to this opinion will not affect the substance of our opinion on the provisions of the GMRA and their effect under Thai law, nor will it affect the substance of our opinion on the validity of the GMRA as a whole under Thai law.

Part V:
Core Provisions of the GMRA

- 1.**
- (a) We have been asked to identify any provisions of the GMRA that we regard as so essential to the GMRA that a material alteration thereof could affect the conclusions reached in this opinion (each such provision a ***Core Provision*** and together the ***Core Provisions***).
 - (b) We have also been asked to confirm that any modification to any provision of the GMRA that is not a Core Provision (each such provision a ***Modifiable Provision*** and together the ***Modifiable Provisions***) would not affect the conclusions reached in this opinion.
 - (c) We have also been asked to confirm that the conclusions reached in this opinion would not change as a result of the inclusion of additional provisions (***Additional Provisions***) in a schedule provided by an Annex to the GMRA. For the purposes of this **paragraph 1(c) and paragraph 2**, we assume that none of the Additional Provisions included would have the effect of modifying or affecting the operation or implementation of any Core Provision.
 - (d) We have also been asked to confirm that the alterations set forth in **Appendix 1, Part VII (the Amendments to Core Provisions)** to Core Provisions, as identified below, of the GMRA 1995 and the GMRA 2000 would not change the conclusions reached in this opinion (for the avoidance of doubt we give no opinion as to the validity or enforceability of the items referred to in the **Amendments to Core Provisions**).

2. We believe that the following provisions contained in the GMRA are Core Provisions:

GMRA 1995

- ◆ *Paragraph 1(a) of the GMRA;*
- ◆ *Paragraph 3(c) and 3(f) of the GMRA;*
- ◆ *Paragraph 6(a), 6(e) and 6(f) of the GMRA;*
- ◆ *Paragraph 10(a), 10(b) and 10(c) of the GMRA;*
- ◆ *Paragraph 13 of the GMRA;*
- ◆ *Paragraph 17 of the GMRA;*
- ◆ **The definitions relating to the foregoing in paragraph 2 of the GMRA; and**
- ◆ *In the case of Agency Transactions, paragraphs 2, 5(a) and 5(b) (except sub-paragraphs (i) and (ii) of Annex IV).*

GMRA 2000

- ◆ *Paragraph 1(a) of the GMRA;*
- ◆ *Paragraph 3(c) and 3(f) of the GMRA;*
- ◆ *Paragraph 6(a), 6(e) and 6(f) of the GMRA;*

- ◆ Paragraph 10(a), 10(b), 10(c), and 10(d) of the GMRA;
 - ◆ Paragraph 13 of the GMRA;
 - ◆ Paragraph 17 of the GMRA;
 - ◆ The definitions relating to the foregoing in paragraph 2 of the GMRA; and
 - ◆ In the case of Agency Transactions, paragraphs 2(a),4(a) and 4(b) (except sub-paragraphs (i) and (ii) of the Agency Annex and, in the case of multiple principals, paragraphs 2(a)(i), 3, 4(a), 4(b)5, 6(a), 6(c) and 6(d) of the Addendum to Agency Annex for multiple principal transactions).
- 3.** We believe that modifications to any Modifiable Provisions would not affect the conclusions reached in this opinion in relation to the GMRA so long as any such modification would not have the effect of modifying or affecting the operation or implementation of any Core Provision.
- 4.** We believe that the conclusions reached in this opinion in relation to the GMRA would not change because of the inclusion of Additional Provisions in Annex I to the GMRA subject to the assumption in paragraph 1(c) above.
- 5.** We believe that the Amendments to Core Provisions or any similar alteration to a Core Provision, as identified above, of the GMRA would not change the conclusions reached in this opinion (for the avoidance of doubt we give no opinion as to the validity or enforceability of the items referred to in Appendix 1, Part VII and assume that none of the Amendments to Core Provisions invalidates or adversely affects the binding effect of any Core Provision).

Part VI:
Transactions entered into as agent pursuant to the GMRA

A court in Thailand would uphold the provisions of the Agency Annex in accordance with their terms.

~~APPENDIX 2~~ PART VII

Amendments to Core Provisions of the 1995 TBMA/ISMA Global Master Repurchase Agreement

General Remark: Pursuant to the assumption of the legal opinions on the enforceability of the Global Master Repurchase Agreement prepared for ICMA and SIFMA modifications made by the Annexes (i.e., Buy/Sell Back Annex, Agency Annex, Bills of Exchange Annex, EMU Annex, Equities Annex, Gilts Annex, Net Paying Securities Annex, Italian Annex, Japanese Securities Annex,) in the form published by ICMA and SIFMA, other than the Gilts Annex (published by the Bank of England) and the Japanese Securities Annex (published by the Japanese Securities Dealers Association), are covered by the opinions.

Paragraph 1(a)

any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement that has been superseded by the GMRA or not;

any amendment to expand the applicability of the GMRA to transactions in which one party agrees to sell to the other equities, U.S. Treasury Instruments or Net Paying Securities.

Paragraph 2

Definition of "Act of Insolvency": any change to cover additional cases under paragraph 2(a);

Definition of "Act of Insolvency": any modification to paragraph 2(a) more specifically describing the terms "trustee", "administrator" or "analogous officer" used in sub-clause (iii) or (v), e.g., adding any such officer;

Definition of "Act of Insolvency": any modification to paragraph 2(a) more specifically describing a proceeding intended to be covered by the term "analogous proceeding" used in sub-clause (iv) or (vi), e.g., adding any such proceeding;

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) deleting the third parenthetical in the sixth and seventh line;

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) broadening the scope of the third parenthetical in the sixth and seventh line, e.g., by more specifically describing a proceeding intended to be covered by the term "analogous proceeding" or by adding any such proceeding;

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Act of Insolvency;

Definition of "Act of Insolvency": any modification of the 30 day period contained in sub-clauses (iv) of paragraph 2(a);

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) inserting the words "provided that this definition shall not apply to any proceedings which are of a frivolous or vexatious nature" after the word "filing";

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) requiring that the presentation or filing of the petition must be made in good faith or a commercially reasonable manner;

Definition of "Equivalent Securities": any change to paragraph 2(o) broadening the scope of such definition to cover a conversion, subdivision or consolidation of Purchased Securities;

Definition of "equivalent to": any change to paragraph 2(p) pursuant to which Securities will be equivalent to other Securities notwithstanding that those Securities have been re-denominated in Euro or the nominal value of the Securities has changed in connection with such re-denomination.

Paragraph 3(c)

(no amendments)

Paragraph 6(a)

any amendment modifying the enumeration of book entry systems (e.g., adding the book entry system of the Federal Reserve Bank of New York) in the second sentence under (ii);

any change providing that transfers pursuant to paragraph 6(a) are to be effected in compliance with a particular Act (e.g., the U.S. Uniform Commercial Code) or the applicable provisions of a specified jurisdiction (which shall be deemed to include any method of transfer mutually agreed between the Seller and the Buyer) or the applicable requirements and procedures of a specified securities clearance system.

Paragraph 6(e)

(no amendments)

Paragraph 6(f)

(no amendments)

Paragraph 10(a) (other than Paragraph 10(a)(iv))

any modification adding further events that constitute an Event of Default as defined in paragraph 10(a) (e.g., without limitation, the failure to deliver Purchased Securities or Equivalent Securities on the applicable date, a force majeure, cross default or downgrading event, the death or incapacity of a party or its general partner, any Default under a Specified Transaction), such change may or may not be coupled with a grace period or the serving of a Default Note on the Defaulting Party by the non-Defaulting Party;

any change broadening the scope of paragraph 10(a)(i) to the effect that the failure by any party, whether Buyer or Seller, to make any payment under the GMRA constitute an Event of Default, such change may or may not be coupled with a grace period;

any deletion of, addition to or modification of the scope of the enumerated Events of Default contained in paragraph 10(a)(vii);

the stipulation of a grace period or the modification of the grace period with respect to the Events of Default in paragraph 10(a).

In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of paragraph 10(a).

Paragraph 10(a)(iv)

any change providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Event of Default;

any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required in the cases mentioned in the parenthetical, irrespective of whether this change applies to all or only one or more of such cases; such changes may or may not be coupled with other changes of paragraph 10(a)(iv) or the definition "Act of Insolvency";

any change eliminating the requirement that the non-Defaulting Party serves a Default Notice on the Defaulting Party, irrespective of whether this change applies to all or only one or more certain cases of an Act of Insolvency; such changes may or may not be coupled with other changes of paragraph 10(a)(iv) or the definition "Act of Insolvency";

any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required only if the relevant petition is presented or filed in a court or before an agency, or the relevant receiver, administrator, liquidator, trustee or analogous officer has been appointed by a court or agency in the jurisdiction where the Defaulting Party is incorporated, irrespective of whether this change applies to all or only one or more of the proceedings or officers specified in paragraph 2(a)(iv) or (v); such changes may or may not be coupled with a change in paragraph 2(a)(iv) or (v);

any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is not required, if the Defaulting Party is governed by a legal system that does not permit termination to take place after certain cases of an Act of Insolvency have occurred;

any change to the effect that certain events are treated in the same way as an Act of Insolvency or as an Act of Insolvency, for which no Default Notice is required.

In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a)(iv) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of paragraph 10(a)(iv);

Paragraph 10(b)

(no amendments)

Paragraph 10(c)

any change providing that the payment of an amount that is due as a result of the calculation described in paragraph 10(c)(ii) may be set off against certain other obligations;

any change providing for a separate netting of Transactions that, under applicable law, cannot be netted against one another in performing the calculations contemplated by paragraph 10(c)(ii);

any amendment providing that the payment by the Non-Defaulting Party of an amount that is due as a result of the calculation described in paragraph 10(c)(ii) shall be subject to the Defaulting Party having satisfied all of its obligations (under the GMRA or otherwise) to the Non-Defaulting Party; these amendments may or may not include payments to, or obligations of, Affiliates of one party or of both parties;

any amendment to paragraph 10(c) clarifying that the amount due as a result of the calculation described in paragraph 10(c)(ii) represents a genuine pre-estimate of all losses and damages and/or that such amount is not a penalty.

Paragraph 10(e)

any deletion of, addition to or modification of paragraph 10(e).

Paragraph 10(f)

any deletion of, addition to or modification of paragraph 10(f).

Paragraph 10(g)

any deletion of paragraph 10(g), or any modification to such provision e.g., establishing an obligation of the Defaulting Party to indemnify the other party against additional losses, damages, expenses etc.

Paragraph 10(h)

any deletion of paragraph 10(h) or any modification of such provision to the effect that either party can claim any sum, or certain components, of consequential loss or damage in the event of a failure by the other party to perform any of its obligations under this GMRA.

[Paragraph 13]

any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement, that has been superseded by the GMRA, or not;

any amendment to add at the end of paragraph 13 after the word "hereunder" and before the "." the following:

", and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted, and (iii) that each party shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction hereunder."

[Paragraph 15]

any amendment to the first sentence providing that a particular existing agreement survives;

any amendment to the second sentence clarifying that each paragraph of an Annex to the GMRA shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph;

any amendment to the second sentence (i) clarifying that each paragraph to an Annex of the GMRA shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph and (ii) stipulating that the parties shall endeavour to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close a possible to that of the invalid, illegal or unenforceable provision;

any amendment to the second sentence to the effect that circumstances such as an illegality, invalidity or unenforceability of a provision of the GMRA or any of the Annexes thereto shall not affect its remaining provisions except to the extent necessary to delete the illegal, invalid or unenforceable provision, unless the deletion of such provision substantially impairs the benefits of the remaining portions of the GMRA; provided that, without limitation, the deletion of paragraph 1, 2(a), 3, 6, 10 or 13 and any provisions of the Annexes,

which correspond to such paragraphs, would substantially impair the benefits of the remaining portions of the GMRA.

Paragraph 16(a)

(no amendments)

Paragraph 17

any change providing that all terms and phrases which are used in the GMRA and which are expressly defined by reference to statutory provisions of a specified jurisdiction shall be governed by and/or construed in accordance with the laws of such jurisdiction (and without regard to its choice of law principles);

any change to the effect that the courts of England have exclusive jurisdiction, such changes may or may not provide that the exclusiveness of the courts of England apply to one party only and that the other party retains its right to take proceedings in the courts of any other country of competent jurisdiction;

in an Agreement entered into between a party incorporated, organized or resident in England (the "English Party") and a party which is not an English Party (the "Non-English Party"), any change to the effect that (i) the fourth sub-paragraph of paragraph 17 applies to the English Party only and, with respect to the Non-English Party, the courts of England have exclusive jurisdiction, (ii) the English Party may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, (iii) the Non-English Party irrevocably waives any objections to the jurisdiction of any court referred to in (i) and (ii) and irrevocably agrees that a judgement or order of any of such courts in connection with the GMRA or any Transaction is conclusive and binding on it and may enforced against it in the courts of any other jurisdiction.

**Amendments to Core Provisions
of the 2000 TBMA/ISMA Global Master Repurchase Agreement**

General Remark: Pursuant to the assumption of the legal opinions on the enforceability of the Global Master Repurchase Agreement prepared for ICMA and SIFMA modifications made by the Annexes (i.e., Buy/Sell Back Annex, Agency Annex, Bills of Exchange Annex, Equities Annex, Gilts Annex, Italian Annex, Canadian Annex, Japanese Securities Annex, Thailand Annex) in the form published by ICMA and SIFMA, other than the Gilts Annex (published by the Bank of England) and the Japanese Securities Annex (published by the Japanese Securities Dealers Association), are covered by the opinions.

Paragraph 1(a)

any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement that has been superseded by the GMRA or not;

any amendment to expand the applicability of the GMRA to transactions in which one party agrees to sell to the other equities, U.S. Treasury Instruments or Net Paying Securities.

Paragraph 2

Definition of "Act of Insolvency": any change to cover additional cases under paragraph 2(a);

Definition of "Act of Insolvency": any modification to paragraph 2(a) more specifically describing the terms "trustee", "administrator" or "analogous officer" used in sub-clause (iii) or (v), e.g., adding any such officer;

Definition of "Act of Insolvency": any modification to paragraph 2(a) more specifically describing a proceeding intended to be covered by the term "analogous proceeding" used in sub-clause (iv) or (vi), e.g., adding any such proceeding;

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) deleting the third parenthetical in the seventh and eighth line;

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) broadening the scope of the third parenthetical in the seventh and eighth line, e.g., by more specifically describing a proceeding intended to be covered by the term "analogous proceeding" or by adding any such proceeding;

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Act of Insolvency;

Definition of "Act of Insolvency": any modification of the 30 day period contained in sub-clauses (iv) of paragraph 2(a);

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) inserting the words "provided that this definition shall not apply to any proceedings which are of a frivolous or vexatious nature" after the word "filing";

Definition of "Act of Insolvency": any change to paragraph 2(a)(iv) requiring that the presentation or filing of the petition must be made in good faith or a commercially reasonable manner;

Definition of "Equivalent Securities": any change to paragraph 2(s) broadening the scope of such definition to cover a conversion, subdivision or consolidation of Purchased Securities;

Definition of "equivalent to": any change to paragraph 2(t) pursuant to which Securities will be equivalent to other Securities notwithstanding that those Securities have been re-denominated in Euro or the nominal value of the Securities has changed in connection with such re-denomination.

Paragraph 3(c)

(no amendments)

Paragraph 6(a)

any amendment modifying the enumeration of book entry systems (e.g., adding the book entry system of the Federal Reserve Bank of New York) in the second sentence under (ii);

any change providing that transfers pursuant to paragraph 6(a) are to be effected in compliance with a particular Act (e.g., the U.S. Uniform Commercial Code) or the applicable provisions of a specified jurisdiction (which shall be deemed to include any method of transfer mutually agreed between the Seller and the Buyer) or the applicable requirements and procedures of a specified securities clearance system;

Paragraph 6(c)

(no amendments)

Paragraph 6(f)

(no amendments)

Paragraph 10(a) (other than Paragraph 10(a)(vi))

any modification adding further events that constitute an Event of Default as defined in paragraph 10(a) (e.g., without limitation, the failure to deliver Purchased Securities or Equivalent Securities on the applicable date, a force majeure, cross default or downgrading event, the death or incapacity of a party or its general partner, any Default under a Specified Transaction), such change may or may not be coupled with a grace period or the serving of a Default Note on the Defaulting Party by the non-Defaulting Party;

any change broadening the scope of paragraph 10(a)(i) to the effect that the failure by any party, whether Buyer or Seller, to make any payment under the GMRA constitute an Event of Default, such change may or may not be coupled with a grace period;

any deletion of, addition to or modification of the scope of the enumerated Events of Default contained in paragraph 10(a)(ix);

the stipulation of a grace period or the modification of the grace period with respect to the Events of Default in paragraph 10(a);

In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of paragraph 10(a).

Paragraph 10(a)(vi)

any change providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Event of Default;

any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required in the cases mentioned in the parenthetical, irrespective of whether this change applies to all or only one or more of such cases; such changes may or may not be coupled with other changes of paragraph 10(a)(vi) or the definition "Act of Insolvency";

any change eliminating the requirement that the non-Defaulting Party serves a Default Notice on the Defaulting Party, irrespective of whether this change applies to all or only one or more certain cases of an Act of Insolvency; such changes may or may not be coupled with other changes of paragraph 10(a)(vi) or the definition "Act of Insolvency";

any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required only if the relevant petition is presented or filed in a court or before an agency, or the relevant receiver, administrator, liquidator, trustee or analogous officer has been appointed by a court or agency in the jurisdiction where the Defaulting Party is incorporated, irrespective of whether this change applies to all or only one or more of the proceedings or officers specified in paragraph 2(a)(vi) or (vii); such changes may or may not be coupled with a change in paragraph 2(a)(vi) or (vii);

any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is not required, if the Defaulting Party is governed by a legal system that does not permit termination to take place after certain cases of an Act of Insolvency have occurred;

any change to the effect that certain events are treated in the same way as an Act of Insolvency or as an Act of Insolvency, for which no Default Notice is required;

In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a)(vi) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of paragraph 10(a)(vi).

Paragraph 10(b)

(no amendments)

Paragraph 10(c)

any change providing that the payment of an amount that is due as a result of the calculation described in paragraph 10(c)(ii) may be set off against certain other obligations;

any change providing for a separate netting of Transactions that, under applicable law, cannot be netted against one another in performing the calculations contemplated by paragraph 10(c)(ii);

any amendment providing that the payment by the Non-Defaulting Party of an amount that is due as a result of the calculation described in paragraph 10(c)(ii) shall be subject to the Defaulting Party having satisfied all of its obligations (under the GMRA or otherwise) to the Non-Defaulting Party; these amendments may or may not include payments to, or obligations of, Affiliates of one party or of both parties;

any amendment to paragraph 10(c) clarifying that the amount due as a result of the calculation described in paragraph 10(c)(ii) represents a genuine pre-estimate of all losses and damages and/or that such amount is not a penalty.

Paragraph 10(e)

any deletion of, addition to or modification of paragraph 10(e).

Paragraph 10(h)

any deletion of, addition to or modification of paragraph 10(h).

Paragraph 10(i)

any deletion of paragraph 10(i), or any modification to such provision e.g., establishing an obligation of the Defaulting Party to indemnify the other party against additional losses, damages, expenses etc.

Paragraph 10(j)

any deletion of paragraph 10(j) or any modification of such provision to the effect that either party can claim any sum, or certain components, of consequential loss or damage in the event of a failure by the other party to perform any of its obligations under this Agreement.

Paragraph 13

any amendment to expand the applicability of the Agreement to transactions that have been effected before the date of the Agreement, irrespective of whether they have been entered into under a prior master agreement, that has been superseded by the Agreement, or not;

any amendment to add at the end of paragraph 13 after the word "hereunder" and before the "." the following: ", and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted, and (iii) that each party shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction hereunder."

[Paragraph 15]

any amendment to the first sentence providing that a particular existing agreement survives;

any amendment to the second sentence clarifying that each paragraph of an Annex to the Agreement shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph;

any amendment to the second sentence (i) clarifying that each paragraph to an Annex of the Agreement shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph and (ii) stipulating that the parties shall endeavour to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close a possible to that of the invalid, illegal or unenforceable provision;

any amendment to the second sentence to the effect that circumstances such as an illegality, invalidity or unenforceability of a provision of the Agreement or any of the Annexes thereto shall not affect its remaining provisions except to the extent necessary to delete the illegal, invalid or unenforceable provision, unless the deletion of such provision substantially impairs the benefits of the remaining portions of the Agreement; provided that, without limitation, the deletion of paragraph 1, 2(a), 3, 6, 10 or 13 and any provisions of the Annexes, which correspond to such paragraphs, would substantially impair the benefits of the remaining portions of the Agreement.

Paragraph 16(a)

(no amendments)

Paragraph 17

any change providing that all terms and phrases which are used in the Agreement and which are expressly defined by reference to statutory provisions of a specified jurisdiction shall be governed by and/or construed in accordance with the laws of such jurisdiction (and without regard to its choice of law principles);

any change to the effect that the courts of England have exclusive jurisdiction, such changes may or may not provide that the exclusiveness of the courts of England apply to one party only and that the other party retains its right to take proceedings in the courts of any other country of competent jurisdiction;

in an Agreement entered into between a party incorporated, organized or resident in England (the "English Party") and a party which is not an English Party (the "Non-English Party"), any change to the effect that (i) the fourth sub-paragraph of paragraph 17 applies to the English Party only and, with respect to the Non-English Party, the courts of England have exclusive jurisdiction, (ii) the English Party may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, (iii) the Non-English Party irrevocably waives any objections to the jurisdiction of any court referred to in (i) and (ii) and irrevocably agrees that a judgement or order of any of such courts in connection with the Agreement or any Transaction is conclusive and binding on it and may enforced against it in the courts of any other jurisdiction.

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