

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 21 December 2006

on the management of the foreign reserve assets of the European Central Bank by the national central banks and the legal documentation for operations involving such assets

(ECB/2006/28)

(2007/C 17/02)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community, and in particular to the third indent of Article 105(2) thereof,

Having regard to the third indent of Article 3(1) and Articles 12(1) and 30(6) of the Statute of the European System of Central Banks and of the European Central Bank,

Whereas:

- (1) Pursuant to Article 30(1) of the Statute, the European Central Bank (ECB) is provided by the national central banks (NCBs) of the Member States that have adopted the euro with foreign reserve assets and has the full right to hold and manage the foreign reserves that are transferred to it.
- (2) Pursuant to Articles 9(2) and 12(1) of the Statute, the ECB may manage certain of its activities through the NCBs and has recourse to the NCBs to carry out certain of its operations. Accordingly, the ECB considers that the NCBs should manage the foreign reserves transferred to it as its agents.
- (3) The involvement of the NCBs in the management of the foreign reserve assets transferred to the ECB and the transactions relating to such management require specific documentation for operations involving the ECB's foreign reserves.
- (4) Guideline ECB/2000/1 of 3 February 2000 on the management of the foreign reserve assets of the European Central Bank by the national central banks and the legal documentation for operations involving the foreign reserve assets of the European Central Bank ⁽¹⁾ has already been amended several times since its adoption and should be recast in the interests of clarity and transparency,

HAS ADOPTED THIS GUIDELINE:

Article 1

Definitions

For the purposes of this Guideline:

- 'European jurisdictions' means the following jurisdictions: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Slovenia, Spain, Sweden, Switzerland and the United Kingdom (England and Wales only);

⁽¹⁾ OJ L 207, 17.8.2000, p. 24. Guideline as last amended by Guideline ECB/2005/15 (OJ L 345, 28.12.2005, p. 33).

- 'participating NCB' means the NCB of a Member State that has adopted the euro.

Article 2

Management of foreign reserve assets by the participating NCBs as the ECB's agents

1. Each participating NCB shall be entitled to participate in the operational management of the foreign reserve assets transferred to the ECB. A participating NCB may decide to abstain from such management or to pool such management with one or more other participating NCBs. If an NCB does not participate in the operational management of the ECB's foreign reserve assets, then the other NCBs shall manage the assets that otherwise would have been managed by the abstaining NCB.
2. Participating NCBs shall carry out operations involving the foreign reserve assets of the ECB as agents of the ECB. By commencing such operations, a participating NCB shall be deemed to acknowledge its status as the ECB's agent. In relation to all operations that the participating NCBs conduct on the ECB's behalf, when agreeing on each operation such participating NCBs shall disclose to all parties the ECB's status as principal both by name and by reference to an account number or identifier.
3. When carrying out operations involving the foreign reserve assets of the ECB as the ECB's agent, each participating NCB shall subordinate its own interests, or the interests of any entity for which it carries out operations, to the ECB's interests.
4. When asked by a counterparty of the ECB for proof of its authority to carry out operations involving the foreign reserve assets of the ECB as the ECB's agent, a participating NCB shall provide such counterparty with proof of its mandate of agency.

Article 3

Legal documentation

1. All operations involving the foreign reserve assets of the ECB shall be conducted using standard legal documentation as required by this Article.
2. All collateralised operations involving the foreign reserve assets of the ECB comprising repurchase agreements, reverse repurchase agreements, buy/sell-back agreements and sell/buy-back agreements, and all over-the-counter derivatives operations involving the foreign reserve assets of the ECB shall be documented under the standard agreements listed in Annex I, in such forms as may be approved or amended by the ECB from time to time.

3. A document in the format set out in Annex II shall be annexed to and form an integral part of every standard agreement, except the FBE Master Agreement for Financial Transactions (Edition 2004), under which collateralised operations (including, without limitation, repurchase agreements, reverse repurchase agreements, buy/sell-back agreements, sell/buy-back agreements, securities lending agreements and triparty repo arrangements) or over-the-counter derivatives operations involving the ECB's foreign reserve assets are conducted.

4. There shall be in place with all counterparties a master netting agreement in one of the forms set out in Annex III, except counterparties: (i) with which the ECB has signed an FBE Master Agreement for Financial Transactions (Edition 2004); and (ii) which are organised or incorporated under the laws of any of the European jurisdictions, except Ireland.

5. The provision of financial services involving the foreign reserve assets of the ECB by financial intermediaries including, without limitation, banking, custodial and investment services obtained from correspondents, custodians and depositories, settlement organisations and central clearers for exchange-traded

derivatives shall be documented under such specific agreements as the ECB may approve from time to time.

Article 4

Final provisions

1. This Guideline shall enter into force on 1 January 2007.
2. Guideline ECB/2000/1, as amended, is hereby repealed.
3. References to the repealed Guideline shall be construed as being made to this Guideline.
4. This Guideline is addressed to the participating NCBs.

Done at Frankfurt am Main, 21 December 2006.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET

ANNEX I

STANDARD AGREEMENTS FOR COLLATERALISED OPERATIONS, OVER-THE-COUNTER DERIVATIVES OPERATIONS AND DEPOSITS

1. All collateralised operations involving the foreign reserve assets of the ECB (comprising repurchase agreements, reverse repurchase agreements, buy/sell-back agreements and sell/buy-back agreements) must be documented using the following standard agreements, in such form as may be approved or amended by the ECB from time to time:
 - (a) The FBE Master Agreement for Financial Transactions (Edition 2004) for operations with counterparties organised or incorporated under the laws of any of the European jurisdictions and under the laws of Northern Ireland and Scotland;
 - (b) The Bond Market Association Master Repurchase Agreement for operations with counterparties organised or incorporated under US federal or state laws; and
 - (c) The TBMA/ISMA Global Master Repurchase Agreement (2000 version) for operations with counterparties organised or incorporated under the laws of any jurisdiction other than those listed in subparagraphs (a) or (b).
 2. All over-the-counter derivatives operations involving the ECB's foreign reserve assets must be documented using the following standard agreements, in such form as may be approved or amended by the ECB from time to time:
 - (a) The FBE Master Agreement for Financial Transactions (Edition 2004) for operations with counterparties organised or incorporated under the laws of any of the European jurisdictions;
 - (b) The 1992 International Swaps and Derivatives Association Master Agreement (Multicurrency — cross-border, New York law version) for operations with counterparties organised or incorporated under US federal or state laws; and
 - (c) The 1992 International Swaps and Derivatives Association Master Agreement (Multicurrency — cross-border, English law version) for operations with counterparties organised or incorporated under the laws of any jurisdiction other than those listed in subparagraphs (a) or (b).
 3. All deposits involving the ECB's foreign reserve assets with counterparties which: (i) are eligible for collateralised operations as described in paragraph 1 and/or over-the-counter derivatives operations as described in paragraph 2, and (ii) are organised or incorporated under the laws of any of the European jurisdictions, except Ireland, must be documented using the FBE Master Agreement for Financial Transactions (Edition 2004), in such form as may be approved or amended by the ECB from time to time.
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ANNEX II

ECB ANNEX ⁽¹⁾

This Annex is to be annexed to and form an integral part of any standard agreement, except the FBE Master Agreement for Financial Transactions (Edition 2004), under which collateralised operations (including without limitation repurchase agreements, reverse repurchase agreements, buy/sell back agreements, sell/buy back agreements, securities lending agreements and triparty repo arrangements) or over-the-counter derivatives operations involving the ECB's foreign reserve assets are conducted in accordance with Article 3(3) of this Guideline.

1. The provisions of this Annex shall be supplemental terms and conditions applying to [*name the standard agreement to which this Annex applies*] dated [*date of agreement*] (the 'Agreement') between the European Central Bank (the 'ECB') and [*name of counterparty*] (the 'Counterparty'). The provisions of this Annex shall be annexed to, incorporated in and form an integral part of the Agreement. If and to the extent that any provisions of the Agreement (other than the provisions of this Annex) or the ECB Master Netting Agreement dated as of [*date*] (the 'Master Netting Agreement') between the ECB and the Counterparty, including any other supplemental terms and conditions, annex or schedule to the Agreement, contain provisions inconsistent with or to the same or similar effect as the provisions of this Annex, the provisions of this Annex shall prevail and apply in place of those provisions.
2. Except as required by law or regulation, the Counterparty agrees that it shall keep confidential, and under no circumstances disclose to a third party, any information or advice furnished by the ECB or any information concerning the ECB obtained by the Counterparty as a result of it being a party to the Agreement, including without limitation information regarding the existence or terms of the Agreement (including this Annex) or the relationship between the Counterparty and the ECB created thereby, nor shall the Counterparty use the name of the ECB in any advertising or promotional material.
3. The Counterparty agrees to notify the ECB in writing as soon as reasonably practicable of: (i) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; (ii) the appointment of any liquidator, receiver, administrator or analogous officer or the commencement of any procedure for the winding-up or reorganisation of the Counterparty or any other analogous procedure; or (iii) a change in the Counterparty's name.
4. There shall be no waiver by the ECB of immunity from suit or the jurisdiction of any court, or any relief against the ECB by way of injunction, order for specific performance or for recovery of any property of the ECB or attachment of its assets (whether before or after judgment), in every case to the fullest extent permitted by applicable law.
5. There shall not apply in relation to the ECB any event of default or other provision of any kind in which reference is made to the bankruptcy, insolvency or other analogous event of the ECB.
6. The Counterparty agrees that it has entered into the Agreement (including this Annex) as principal and not as agent for any other entity and that it shall enter into all transactions as principal.

⁽¹⁾ This Annex has been drawn up in English and is incorporated into master agreements drawn up in English which are governed by English or New York law. The translation of this Annex into other languages is for illustrative purposes only and is not legally binding.

ANNEX III

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Annex IIIa

Master Netting Agreement governed by English law and drafted in the English language for use with all counterparties except counterparties:

- (i) incorporated in the United States of America, or
- (ii) incorporated in France and Germany which are eligible only for deposits, or
- (iii) with which the ECB has signed an FBE Master Agreement for Financial Transactions (Edition 2004) and which are organised or incorporated under the laws of any of the European jurisdictions, except Ireland.

Annex IIIb

Master Netting Agreement governed by French law: for use with counterparties incorporated in France which are eligible only for deposits; drafted in the French language.

Annex IIIc

Master Netting Agreement governed by German law: for use with counterparties incorporated in Germany which are eligible only for deposits; drafted in the German language.

Annex IIId

Master Netting Agreement governed by New York law: for use with counterparties incorporated in the United States of America; drafted in the English language.

ANNEX IIIa

Master Netting Agreement governed by English law**MASTER NETTING AGREEMENT**

Dated:

Between:

European Central Bank, Kaiserstrasse 29, D-60311 Frankfurt am Main, Germany (hereinafter referred to as the 'ECB'), and
[Counterparty] whose [address] [registered place of business] is at [address] (hereinafter referred to as the 'Counterparty')

1. Scope of agreement

- 1.1 The purpose of this Agreement (hereinafter referred to as the 'Agreement') is to ensure that the ECB is able to net all existing positions under all outstanding transactions made between the ECB and the Counterparty, regardless of any agent or agents authorised to act on behalf of the ECB through whom the transactions giving rise to those positions may have been effected, including the central bank of any Member State of the European Union which has adopted the euro as its currency, and regardless of which office (including the head office and all branches) of the Counterparty may be involved in such transactions, and after taking into account the effect of any existing netting provisions in master or other agreements between the ECB and the Counterparty and/or provisions of mandatory law that operate with similar effect that may apply to certain of such transactions.
- 1.2 In this Agreement, a 'netting agreement' means any agreement for the time being in effect between the parties (and including, without limitation, this Agreement and agreements of the kind listed in Appendix 1 of this Agreement), including such modifications and additions thereto as may be agreed between the ECB and the Counterparty (hereinafter referred to as the 'parties') from time to time, which contains provisions to the effect that, should any event of default as defined for the purposes of such agreement occur, there may be an early termination, liquidation, closing-out or acceleration of transactions or obligations under transactions or any analogous event (a 'default termination') and the respective obligations of the parties under such agreement may be combined, aggregated or set-off against each other so as to produce a single net balance payable by one party to the other.

2. General

- 2.1 All transactions of whatever nature (hereinafter referred to as 'transactions') entered into between the parties at any time after the date of this Agreement shall be governed by this Agreement, unless the parties specifically agree otherwise.
- 2.2 The parties acknowledge that the terms of this Agreement, all transactions governed by this Agreement, any amendments to the terms of such transactions, and the single net balance payable under any netting agreement constitute a single business and contractual relationship and arrangement.
- 2.3 The Counterparty has entered into this Agreement as principal and represents and warrants that it has entered and shall enter into all transactions as principal.
- 2.4 This Agreement is supplemental to the netting agreements entered into between the parties prior to the date of this Agreement, and all further netting agreements and transactions entered into between the parties after the date of this Agreement shall be supplemental to this Agreement.

3. Base currency

The base currency for the purposes of this Agreement shall be the US dollar or, at the ECB's option, any other currency. Wherever it is necessary in accordance with the terms of this Agreement to convert amounts into the base currency, such amounts shall be converted at the daily reference rate published by the ECB for the currency to be converted into the base currency or, in the absence of such reference rate, at the rate of exchange at which the ECB can buy or sell, as appropriate, such amounts with or against the base currency on such day, all as determined by the ECB.

4. Cross acceleration

Should any default termination occur under any netting agreement (including under Appendix 2 of this Agreement), then the ECB shall have the right to declare, by written notice to the Counterparty, that a default termination has occurred under each other netting agreement in respect of which default termination has not occurred in accordance with the provisions thereof.

5. Global netting

- 5.1 Should a default termination occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other under each netting agreement (including under Appendix 2 of this Agreement) in respect of which default termination has occurred and aggregate the sums due from each party to the other under such netting agreements (including under Appendix 2 of this Agreement), in every case in or converted into the base currency, and only the net balance of the account shall be payable by the party owing the larger aggregate sum.
- 5.2 Clause 5.1 shall continue to operate to the extent possible notwithstanding the unenforceability under applicable law of any provisions contained in any netting agreement (including under Appendix 2 of this Agreement).

6. Notices and other communications

All notices, instructions and other communications to be given under this Agreement shall be effective only upon receipt and shall be made in writing (including by electronic means).

7. Severability

Each provision contained herein (including, without limitation, Appendix 2 of this Agreement) shall be treated as separate from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision.

8. Non-assignability

The rights and obligations of the Counterparty under this Agreement may not be assigned, charged, pledged or otherwise transferred or dealt with by the Counterparty.

9. Governing law and jurisdiction

- 9.1 This Agreement shall be governed by and construed in accordance with English law.
- 9.2 For the benefit of the ECB, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement to the jurisdiction of the District Court (*Landgericht*) of Frankfurt am Main, Germany. Nothing in this clause 9 shall limit the right of the ECB to take proceedings before the courts of any other country of competent jurisdiction.

European Central Bank**Name of Counterparty**

By _____

By _____

Title _____

Title _____

(Address for the service of notices under this Agreement)

Date _____

Date _____

(In case of Luxembourg counterparties:)

In addition to clause 9 of this Agreement the parties agree that for purpose of Article 1 of the Protocol annexed to the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, signed in Brussels on 27 September 1998 and without prejudice to the foregoing execution of this Agreement by the parties hereto, [Luxembourg Counterparty] expressly and specifically confirms its agreement to the provisions of clause 9 of this Agreement, stipulating that the District Court (*Landgericht*) of Frankfurt am Main shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.

Luxembourg Counterparty

By _____

Title _____

*Appendix 1***Netting agreements (*)**

1. FBE Master Agreement for Financial Transactions (Edition 2004)
2. ISDA Master Agreement (Multi-currency — Cross border 1992)
3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)
4. The Bond Market Association Master Repurchase Agreement.

*Appendix 2***Transactions not subject to any netting agreement**

1. The provisions of this Appendix apply to transactions entered into between the parties that are not effectively subject to any other netting agreement.
2. Should:
 - (a) a default termination occur under any netting agreement, or
 - (b) an event that is defined as an event of default or other analogous event under any netting agreement occur, which event would, assuming there were outstanding transactions under any such netting agreement, result in, or entitle the ECB to take steps which would result in, a default termination under such netting agreement,
(any such event under (a) or (b) above is referred to in this Appendix as an 'event of default'),
then all transactions to which this Appendix applies (but not less than all, unless any such transaction may not be so closed out under applicable law) under which obligations have or would otherwise have fallen due by or after the date of such event of default (the 'close out date') shall be liquidated and closed-out as described under paragraphs 3 and 4 of this Appendix, and the ECB shall, without prejudice to paragraphs 3 and 4 of this Appendix, not be obliged to make any further payments or deliveries under any such transactions.
3. Should liquidation and close-out under paragraph 2 of this Appendix occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other, including, as necessary, determining in respect of each transaction the ECB's total gain or loss, as the case may be, resulting from the liquidation and close-out of such transaction as at the date of such liquidation and close-out, in every case in or converted into the base currency. The ECB shall then aggregate such gains and losses and only the balance of the account shall be payable by the Counterparty, if the aggregate losses exceed the aggregate gains, or by the ECB, if the aggregate gains exceed the aggregate losses.
4. In determining in respect of each transaction the ECB's total gain or loss, the ECB shall, subject to applicable law, use a commercially reasonable method of calculation which (a) is based on, to the extent practicable and available, quotations from at least four leading dealers in the relevant market operating in the same financial centre, and (b) takes into account, where applicable, the liquidation and close-out of such transaction earlier than its scheduled value date or delivery date.
5. The parties agree that the calculation of the net sum under paragraphs 3 and 4 of this Appendix is a reasonable pre-estimate of losses suffered.

(*) This documentation is maintained by the ECB Legal Services and the legal departments of the national central banks.

ANNEX IIIb

Master Netting Agreement governed by French law**CONVENTION-CADRE DE COMPENSATION**

Date:

Entre:

La Banque centrale européenne, Kaiserstrasse 29, D-60311 Francfort-sur-le-Main, Allemagne (ci-après dénommée la 'BCE')
et

(ci-après dénommée la 'Contrepartie')

1. Champ d'application de la convention

- 1.1. La présente Convention (ci-après dénommée la 'Convention') a pour objet de permettre à la BCE de compenser l'ensemble des positions existantes dans le cadre de l'ensemble des transactions en cours effectuées entre la BCE et la Contrepartie, sans distinction de l'agent ou des agents autorisés à agir pour le compte de la BCE par l'intermédiaire duquel ou desquels les transactions génératrices de ces positions ont pu être effectuées, y compris la banque centrale de tout Etat membre de l'Union européenne ayant adopté l'euro comme monnaie nationale, et sans distinction de l'établissement (y compris le siège social et l'ensemble des succursales) de la Contrepartie impliqué dans ces transactions, et après prise en considération de l'incidence de toutes les dispositions existantes relatives à la compensation qui figurent dans la convention-cadre ou dans les autres conventions conclues entre la BCE et la Contrepartie et/ou des dispositions de la législation applicable ayant un effet similaire et susceptibles de s'appliquer à certaines de ces transactions.
- 1.2. Dans la présente Convention, on entend par 'convention de compensation' toute convention en vigueur entre les parties (y compris, sans restriction, la présente Convention et les conventions de l'espèce énumérées dans l'additif 1 de la présente Convention), y compris les modifications et avenants aux textes susceptibles d'être convenus, s'il y a lieu, entre la BCE et la Contrepartie (ci-après dénommées les 'parties'), qui comporte des dispositions prévoyant, lors de la survenance d'un cas de défaillance tel que défini dans le cadre de cette convention, une possibilité de résiliation, d'exigibilité anticipées ou de 'close out' des transactions ou des obligations afférentes aux transactions ou de tout événement analogue (une 'résiliation pour défaillance'), les obligations respectives des parties dans le cadre de cette convention pouvant dès lors être regroupées, globalisées ou compensées réciproquement de manière à donner lieu à un solde net unique payable par l'une des parties à l'autre.

2. Dispositions d'ordre général

- 2.1. L'ensemble des transactions de toute nature (ci-après dénommées 'transactions') conclues entre les parties à tout moment après la date de la présente Convention sera régi par la présente Convention, sauf si les parties en décident spécifiquement autrement.
- 2.2. Les parties reconnaissent que les termes de la présente Convention, l'ensemble des transactions régies par elle, toutes les modifications apportées aux termes de ces transactions et le solde net unique payable dans le cadre de toute convention de compensation constituent une relation et un accord professionnels et contractuels uniques.
- 2.3. La Contrepartie a conclu cette Convention en son nom propre; elle déclare et atteste qu'elle a conclu et conclura toutes les transactions en son nom propre.
- 2.4. La présente Convention complète les conventions antérieures de compensation conclues antérieurement entre les parties; toutes les autres conventions de l'espèce et transactions qui seront conclues ultérieurement entre les parties compléteront la présente Convention.

3. Devise de référence

La devise de référence utilisée dans le cadre de cette Convention sera le dollar des Etats-Unis ou, au choix de la BCE, une autre devise. Dans les cas où il sera nécessaire, conformément aux termes de la présente Convention, de convertir les montants dans la devise de référence, la conversion s'effectuera au taux de référence quotidien publié par la BCE pour la devise à convertir dans la devise de référence ou, à défaut de ce taux de référence, au taux de change auquel la BCE peut acheter ou vendre, selon le cas, ces montants avec ou contre la devise de référence ce même jour, selon les conditions définies par la BCE.

4. Clause de défaillance croisée

Lors de la survenance d'une résiliation pour défaillance dans le cadre d'une convention de compensation (y compris dans le cadre de l'additif 2 de la présente Convention), la BCE sera habilitée à prononcer, par notification écrite à la Contrepartie, la résiliation pour défaillance de chacune des autres conventions de compensation pour lesquelles il n'y a pas eu résiliation pour défaillance dans les conditions prévues par les dispositions précitées.

5. Compensation globale

- 5.1. Lors de la survenance d'une résiliation pour défaillance, la BCE comptabilisera dans les meilleurs délais les montants dus par chacune des parties à l'autre au titre de chaque convention de compensation (y compris dans le cadre de l'additif 2 de la présente Convention) pour laquelle est intervenue une résiliation pour défaillance et globalisera les sommes dues par chaque partie à l'autre au titre de ces conventions de compensation (y compris dans le cadre de l'additif 2 de la présente Convention) libellées ou converties dans tous les cas dans la devise de référence, seul le solde net étant payable par la partie débitrice du montant brut le plus élevé.
- 5.2. La clause 5.1 restera en vigueur dans la mesure du possible nonobstant le caractère inapplicable, en vertu de la loi en vigueur, de toute disposition pouvant être contenues dans une convention de compensation (y compris dans le cadre de l'additif 2 de la présente Convention).

6. Notifications et autres communications

L'ensemble des notifications, instructions et autres communications à donner dans le cadre de la présente Convention ne prendront effet qu'à la date de leur réception et seront adressées par écrit (y compris par les moyens électroniques).

7. Gestion séparée

Chacune des dispositions de la présente Convention (y compris, sans restriction, l'additif 2 de ladite Convention) sera traitée isolément des autres dispositions et sera applicable nonobstant le caractère inapplicable de ces autres dispositions.

8. Incessibilité

Les droits et obligations de la Contrepartie dans le cadre de la présente Convention ne peuvent être cédés, transférés ou autrement négociés par la Contrepartie.

9. Loi applicable, attribution de compétences

- 9.1. La présente Convention sera soumise au droit français et interprétée selon ledit droit.
- 9.2. Dans l'intérêt de la BCE, la Contrepartie soumet irrévocablement par la présente Convention tous les cas afférents à celle-ci ou s'y rapportant à la compétence de la juridiction du tribunal (*Landgericht*) de Francfort-sur-le-Main, Allemagne. Aucune disposition de cette clause 9 ne limitera le droit de la BCE d'entamer une procédure judiciaire devant les tribunaux compétents d'un autre pays.

Banque centrale européenne**Contrepartie**

Par _____

Par _____

En qualité de _____

En qualité de _____

Date _____

Date _____

*Appendice 1***Conventions de compensation**

1. FBE Master Agreement for Financial Transactions (Edition 2004)
2. ISDA Master Agreement (Multi-currency — Cross border 1992)
3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)
4. The Bond Market Association Master Repurchase Agreement.

*Appendice 2***Transactions non soumises à une convention de compensation**

1. Les dispositions du présent Additif s'appliquent aux transactions conclues entre les parties qui ne sont pas effectivement soumises à une autre convention de compensation.
 2. Lors de la survenance:
 - (a) d'une résiliation pour défaillance dans le cadre d'une convention de compensation ou
 - (b) d'un événement défini comme étant un cas de défaillance ou un événement analogue dans le cadre d'une quelconque convention de compensation, lequel événement, dans l'hypothèse où des transactions seraient en cours au titre de cette convention de compensation, amènerait ou habiliterait la BCE à prendre des mesures qui entraîneraient une résiliation pour défaillance dans le cadre de ladite convention,
(les événements prévus en (a) ou en (b) étant dénommés dans le présent Additif 'cas de défaillance'),
l'ensemble des transactions concernées par le présent Additif (sans exception, sauf dans le cas où une transaction ne peut faire l'objet d'une résiliation dans ces conditions aux termes de la loi applicable) dans le cadre desquelles les obligations sont ou seraient arrivées à échéance à la date ou après la date de survenance de ce cas de défaillance (la 'date de résiliation') pourront être résiliées par notification écrite de la BCE à la Contrepartie dans les conditions prévues aux paragraphes 3 et 4 du présent Additif et la BCE ne sera pas tenue d'effectuer, sans préjudice des paragraphes 3 et 4 du présent Additif, d'effectuer d'autres paiements ou livraisons au titre de ces transactions.
 3. En cas de résiliation selon les termes du paragraphe 2 du présent Additif, la BCE comptabilisera dans les meilleurs délais les sommes dues par chacune des parties à l'autre, notamment, le cas échéant, en déterminant pour chaque transaction la perte ou le gain total de la BCE résultant de la résiliation de ladite transaction à la date de résiliation, le montant étant dans tous les cas libellé ou converti dans la devise de référence. La BCE globalisera ensuite ces gains et pertes et seul le solde net sera payable par la Contrepartie si le total des pertes excède celui des gains, ou par la BCE si le total des gains excède celui des pertes.
 4. Pour déterminer, dans le cadre de chaque transaction, le montant total du gain ou de la perte de la BCE, celle-ci utilisera, sous réserve de la législation applicable, une méthode de calcul commercialement raisonnable (a) fondée, dans la toute la mesure du possible, sur les cotations fournies par au moins quatre intervenants de premier rang du marché considéré et opérant dans le même centre financier et (b) prenant en compte, le cas échéant, la résiliation de la transaction intervenues antérieurement à la date de valeur ou de livraison prévus.
 5. Les parties conviennent que le calcul de la somme nette aux termes des paragraphes 3 et 4 du présent Additif constitue une estimation raisonnable des pertes encourues.
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ANNEX IIIc

Master Netting Agreement governed by German law**Europäische Zentralbank****EZB-Aufrechnungsvertrag
(‘Master Netting Agreement’)**

vom:

zwischen

der Europäische Zentralbank, Kaiserstraße 29, D-60311 Frankfurt am Main, Deutschland (im nachfolgenden ‘EZB’) und

.....

(Im nachfolgenden ‘Vertragspartner’)

1. Anwendungsbereich dieses Vertrages

- 1.1 Der Zweck dieses Vertrages (im folgenden: ‘Vertrag’) besteht darin, die Verrechnung aller bestehenden Positionen aus allen offenen Geschäften zwischen der EZB und dem Vertragspartner zu ermöglichen. Der Vertrag schließt Geschäfte ein, die die EZB über Stellvertreter (z. B. Teilnehmerzentralbanken) abschließt. Er umfaßt auch ferner alle diejenigen Geschäfte, die über die Hauptverwaltung oder eine unselbständige Zweigniederlassung des Vertragspartners mit der EZB abgeschlossen werden. Der Vertrag berücksichtigt ferner alle sonst zwischen den Parteien bestehenden Rahmenverträge oder sonstigen Vereinbarungen, die Aufrechnungsklauseln enthalten, sowie zwingende gesetzliche Vorschriften mit ähnlichen Wirkungen.
- 1.2 Unter einem Aufrechnungsvertrag (Netting Agreement) im Sinne dieses Vertrages (im folgenden: ‘Aufrechnungsvertrag’) sind alle die zwischen den Parteien getroffenen (einschließlich dieses Vertrags sowie der im Anhang 1 zum Vertrag aufgeführten) Vereinbarungen in ihrer jeweiligen Fassung zu verstehen, die Klauseln enthalten, wonach im Fall eines wichtigen Grundes (event of default) insbesondere eine vorzeitige Beendigung eintritt oder eine Kündigung ausgesprochen werden kann (im folgenden: ‘Beendigung oder Kündigung aus wichtigem Grund’); ferner muß dort vereinbart sein, daß infolge einer Beendigung oder Kündigung Geschäfte oder Verpflichtungen fällig bzw. in verrechenbare, fällige Forderungen umgewandelt werden, die anschließend zusammengefaßt, ver- oder aufgerechnet werden mit der Folge, daß lediglich ein einziger Nettosaldo durch eine der beiden Parteien geschuldet wird.

2. Allgemeines

- 2.1 Für alle Geschäfte, die die Parteien nach Unterzeichnung dieses Vertrages tätigen (in folgenden ‘Einzelabschlüsse’), gelten die nachfolgenden Bestimmungen, sofern die Parteien im Einzelabschluß nichts abweichendes vereinbaren.
- 2.2 Die Parteien sind sich darüber einig, daß dieser Vertrag in seiner jeweiligen Fassung, alle Einzelabschlüsse, die von diesem Vertrag erfaßt werden, und die aus Aufrechnungsverträgen resultierenden Nettosalden ein einheitliches Vertragsverhältnis bilden.
- 2.3 Die Vertragsparteien sichern zu, daß sie den Vertrag in eigenem Namen abgeschlossen haben und alle Einzelabschlüsse ebenfalls in eigenem Namen tätigen werden.

3. Vertragswährung (‘base currency’)

Vertragswährung ist der US-Dollar oder jede andere Währung, die die Parteien vereinbaren. Die Umrechnung von auf andere Währungen lautenden Beträgen in die Vertragswährung erfolgt jeweils zum täglichen Referenzkurs, den die EZB für die umzurechnende Währung veröffentlicht oder, hilfsweise, zum jeweiligen Marktkurs, zu dem die EZB an diesem Geschäftstag den umzurechnenden Währungsbetrag gegen die Vertragswährung kaufen oder verkaufen kann.

4. Vertragsübergreifendes Kündigungs- oder Beendigungsrecht aus wichtigem Grund

Sofern die EZB ein Kündigungs- oder Beendigungsrecht aus wichtigem Grund im Rahmen eines Aufrechnungsvertrages (sowie auch gemäß Anhang 2 zu diesem Vertrag) hat, erstreckt sich dieses Recht auch auf jeden anderen Aufrechnungsvertrag, auch wenn nach den dortigen Vereinbarungen ein vergleichbarer Kündigungs- oder Beendigungsgrund noch nicht gegeben ist.

5. Allumfassende Aufrechnungsvereinbarung ('global netting')

- 5.1 Sollte eine Beendigung oder Kündigung aus wichtigem Grund stattfinden, wird die EZB unverzüglich die aus den jeweiligen Aufrechnungsverträgen (sowie auch aus Anhang 2 zu diesem Vertrag) resultierenden Nettosalde errechnen und diese, nach Umrechnung in die Vertragswährung, zu einer einzigen Forderung oder Verbindlichkeit zusammenfassen mit der Folge, daß nurmehr dieser Betrag zwischen den Parteien geschuldet wird.
- 5.2 Z. 5.1 gilt ungeachtet dessen, daß Klauseln in Aufrechnungsverträgen (einschl. Anhang 2 zu diesem Vertrag) nach dem jeweils anwendbaren Recht nicht wirksam bzw. nichtig sind.

6. Erklärungen und andere Mitteilungen

Alle Erklärungen, Weisungen und andere Mitteilungen im Rahmen dieses Vertrages sind nur dann wirksam, wenn sie in Schriftform oder in elektronischer Form übermittelt werden und der Gegenseite auch zugegangen sind.

7. Teilbarkeit

Sollte eine Bestimmung dieses Vertrages (einschließlich des Anhangs 2) ganz oder teilweise unwirksam sein oder werden, bleiben die übrigen Bestimmungen wirksam. An Stelle der unwirksamen Bestimmungen tritt eine wirksame Regelung, die dem wirtschaftlichen Zweck mit der unwirksamen Bestimmung soweit wie möglich Rechnung trägt.

8. Die Rechte und Pflichten aus dem Vertrag darf der Vertragspartner weder abtreten noch in sonstiger Weise hierüber verfügen.
9. 9.1. Dieser Vertrag unterliegt dem Recht der Bundesrepublik Deutschland.
9.2 Nicht ausschließlicher Gerichtsstand ist Frankfurt am Main.

Europäische Zentralbank**Vertragspartner**

Name _____

Name _____

Titel _____

Titel _____

Ort, Datum _____

Ort, Datum _____

*Anhang 1***Liste der Aufrechnungsverträge**

1. FBE Master Agreement for Financial Transactions (Edition 2004)
2. ISDA Master Agreement (Multi-currency — Cross border 1992)
3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)
4. The Bond Market Association Master Repurchase Agreement.

*Anhang 2***Geschäfte, die keinem Aufrechnungsvertrag unterliegen**

1. Vorschriften dieses Anhanges finden Anwendung auf solche Einzelabschlüsse zwischen den Parteien, die von keinem anderen Aufrechnungsvertrag erfaßt werden.
 2. Sofern
 - a) eine Beendigung oder Kündigung aus wichtigem Grund nach Maßgabe eines Aufrechnungsvertrages eintritt oder
 - b) ein Beendigungs- oder Kündigungsgrund nach Maßgabe eines Aufrechnungsvertrages vorliegt, der zur Beendigung führen oder zur Kündigung durch die EZB berechtigen würde, sofern Einzelabschlüsse im Rahmen dieses Aufrechnungsvertrages getätigt worden wären,
(im folgenden: 'beendigendes Ereignis im Sinne dieses Anhangs')
und die EZB eine Kündigung im Hinblick auf diesen Anhang ausgesprochen hat, dann werden alle unter diesen Anhang fallenden Einzelabschlüsse gemäß den Ziffern 3 und 4 dieses Anhangs beendet und abgerechnet, sofern diese Einzelabschlüsse Verpflichtungen enthalten, die im Zeitpunkt des Wirksamwerdens der Beendigung oder Kündigung noch nicht fällig sind. Die Hauptpflichten aus diesen Einzelgeschäften erlöschen, vorbehaltlich der nachfolgenden Ziffern 3 und 4 dieses Anhangs.
 3. Sollte eine Beendigung oder Kündigung gemäß Ziffer 2 dieses Anhangs eintreten, wird die EZB unverzüglich die beiderseitigen Ansprüche ermitteln und hierbei, sofern erforderlich, den aus jedem Einzelabschluß für die EZB resultierenden Gewinn oder Verlust ermitteln, der sich aus der vorzeitigen Kündigung oder Beendigung an dem Tag ergibt, an dem die Kündigung oder Beendigung wirksam wird; sie wird ferner diese Positionen ggf. in die Vertragswährung umrechnen. Die EZB faßt dann diese Forderungen und Verbindlichkeiten zu einer einzigen Forderung oder Verbindlichkeit zusammen mit der Folge, daß nurmehr dieser Betrag zwischen den Parteien geschuldet wird.
 4. Zur Ermittlung der Gewinne und Verluste der EZB aus den jeweiligen Einzelabschlüssen wird die EZB, vorbehaltlich des anwendbaren Rechtes, eine für beide Seiten angemessene Berechnungsmethode verwenden, die a), soweit möglich und vorhanden, auf den von mindestens vier bedeutenden Marktteilnehmern an dem maßgeblichen Finanzplatz gestellten Kursen oder Preisen beruht und b) hierbei in Rechnung stellt, daß die Beendigung oder Kündigung des jeweiligen Einzelabschlusses vorzeitig stattgefunden hat.
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ANNEX IIIa

Master netting agreement governed by New York law**MASTER NETTING AGREEMENT**

Dated as of:

Between:

European Central Bank, Kaiserstrasse 29, D-60311 Frankfurt am Main, Germany (hereinafter referred to as the 'ECB'), and
[Counterparty] whose [address] [registered place of business] is at [address] (hereinafter referred to as the 'Counterparty')

1. Scope of agreement

- 1.1 The purpose of this Agreement (hereinafter referred to as the 'Agreement') is to ensure that the ECB is able to net all existing positions under all outstanding transactions made between the ECB and the Counterparty, regardless of any agent or agents authorised to act on behalf of the ECB through whom the transactions giving rise to those positions may have been effected, including the central bank of any Member State of the European Union which has adopted the euro as its currency, and regardless of which office (including the head office and all branches) of the Counterparty may be involved in such transactions, and after taking into account the effect of any existing netting provisions in master or other agreements between the ECB and the Counterparty and/or provisions of mandatory law that operate with similar effect that may apply to certain of such transactions.
- 1.2 In this Agreement, a 'netting agreement' means any agreement for the time being in effect between the parties (and including, without limitation, this Agreement and agreements of the kind listed in Appendix 1 of this Agreement), including such modifications and additions thereto as may be agreed between the ECB and the Counterparty (hereinafter referred to as the 'parties') from time to time, which contains provisions to the effect that, should any event of default as defined for the purposes of such agreement occur, there may be an early termination, liquidation, closing-out or acceleration of transactions or obligations under transactions or any analogous event (a 'default termination') and the respective obligations of the parties under such agreement may be combined, aggregated or netted against each other so as to produce a single net balance payable by one party to the other.

2. General

- 2.1 All transactions of whatever nature (hereinafter referred to as 'transactions') entered into between the ECB and the parties at any time after the date of this Agreement shall be governed by this Agreement, unless the parties specifically agree otherwise.
- 2.2 The parties acknowledge that the terms of this Agreement, all transactions governed by this Agreement, any amendments to the terms of such transactions, and the single net balance payable under any netting agreement constitute a single business and contractual relationship and arrangement.
- 2.3 Each party represents and warrants to the other that it is a financial institution for purposes of the U.S. Federal Deposit Insurance Corporation Improvement Act of 1991 (hereinafter referred to as 'FDICIA'), and the parties agree that this Agreement shall be a netting contract, as defined in FDICIA, and that each receipt or payment obligation under the Agreement shall be a covered contractual payment entitlement or covered contractual payment obligation respectively, as defined in and subject to FDICIA.
- 2.4 The Counterparty has entered into this Agreement as principal and represents and warrants that it has entered and shall enter into all transactions as principal.
- [2.5 The Counterparty represents and warrants to, and covenants and agrees with the ECB, that:
- (a) it has the power to execute and deliver this Agreement and any other documentation relating to this Agreement to which it is a party and that it is required to deliver; it has the power to perform its obligations under this Agreement and any obligations under any netting agreement to which it is a party; it has taken all necessary action to authorise such execution, delivery and performance, including authorisations required under the U.S. Federal Deposit Insurance Act, as amended, including amendments effected by the U.S. Federal Institutions Reform, Recovery and Enforcement Act of 1989, and under any agreement, writ, decree or order entered into with a party's supervisory authorities; and
- (b) at all times during the term of this Agreement, it will continuously include and maintain as part of its official written books and records this Agreement, the netting agreements and evidence of all necessary authorisations.]⁽¹⁾

⁽¹⁾ Representation to be used where the Counterparty is a US depository institution.

[2.5][2.6] This Agreement is supplemental to the netting agreements entered into between the parties prior to the date of this Agreement, and all further netting agreements and transactions entered into between the parties after the date of this Agreement shall be supplemental to this Agreement.

3. **Base currency**

The base currency for the purposes of this Agreement shall be the US dollar or, at the ECB's option, any other currency. Wherever it is necessary in accordance with the terms of this Agreement to convert amounts into the base currency, such amounts shall be converted at the daily reference rate published by the ECB for the currency to be converted into the base currency or, in the absence of such reference rate, at the rate of exchange at which the ECB can buy or sell, as appropriate, such amounts with or against the base currency on such day, all as determined by the ECB.

4. **Cross acceleration**

Should any default termination occur under any netting agreement (including under Appendix 2 of this Agreement), then the ECB shall have the right to declare, by written notice to the Counterparty, that a default termination has occurred under each other netting agreement in respect of which default termination has not occurred in accordance with the provisions thereof.

5. **Global netting**

5.1 Should a default termination occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other under each netting agreement (including under Appendix 2 of this Agreement) in respect of which default termination has occurred and aggregate the sums due from each party to the other under such netting agreements (including under Appendix 2 of this Agreement), in every case in or converted into the base currency, and only the net balance of the account shall be payable by the party owing the larger aggregate sum.

5.2 Clause 5.1 shall continue to operate to the extent possible notwithstanding the unenforceability under applicable law of any provisions contained in any netting agreement (including under Appendix 2 of this Agreement).

6. **Notices and other communications**

All notices, instructions and other communications to be given under this Agreement shall be effective only upon receipt and shall be made in writing (including by electronic means).

7. **Severability**

Each provision contained herein (including, without limitation, Appendix 2 of this Agreement) shall be treated as separate from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision.

8. **Non-assignability**

The rights and obligations of the Counterparty under this Agreement may not be assigned, charged, pledged or otherwise transferred or dealt with by the Counterparty.

9. **Governing law and jurisdiction**

9.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America.

9.2 For the benefit of the ECB, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement to the jurisdiction of the District Court (*Landgericht*) of Frankfurt am Main, Germany. Nothing in this clause 9 shall limit the right of the ECB to take proceedings before the courts of any other country of competent jurisdiction.

European Central Bank

[Name of Counterparty] ⁽¹⁾

By _____

By _____

Title _____

Title _____

(Address for the service of notices under this Agreement)

Date _____

Date _____

⁽¹⁾ In the case of US depository institution counterparties, to be executed by a bank officer at the level of Vice President or higher.

*Appendix 1***Netting agreements**

1. FBE Master Agreement for Financial Transactions (Edition 2004)
2. ISDA Master Agreement (Multi-currency — Cross border 1992)
3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)
4. The Bond Market Association Master Repurchase Agreement.

*Appendix 2***Transactions not subject to any netting agreement**

1. The provisions of this Appendix apply to transactions entered into between the parties that are not effectively subject to any other netting agreement.
 2. Should:
 - (a) a default termination occur under any netting agreement, or
 - (b) an event that is defined as an event of default or other analogous event under any netting agreement occur, which event would, assuming there were outstanding transactions under any such netting agreement, result in, or entitle the ECB to take steps which would result in, a default termination under such netting agreement,
(any such event under (a) or (b) above is referred to in this Appendix as an 'event of default'),
then all transactions to which this Appendix applies (but not less than all, unless any such transaction may not be so closed out under applicable law) under which obligations have or would otherwise have fallen due by or after the date of such event of default (the 'close out date') shall be liquidated and closed-out as described under paragraphs 3 and 4 of this Appendix, and the ECB shall, without prejudice to paragraphs 3 and 4 of this Appendix, not be obliged to make any further payments or deliveries under any such transactions.
 3. Should liquidation and close-out under paragraph 2 of this Appendix occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other, including, as necessary, determining in respect of each transaction the ECB's total gain or loss, as the case may be, resulting from the liquidation and close-out of such transaction as at the date of such liquidation and close-out, in every case in or converted into the base currency. The ECB shall then aggregate such gains and losses and only the balance of the account shall be payable by the Counterparty, if the aggregate losses exceed the aggregate gains, or by the ECB, if the aggregate gains exceed the aggregate losses.
 4. In determining in respect of each transaction the ECB's total gain or loss, the ECB shall, subject to applicable law, use a commercially reasonable method of calculation which (a) is based on, to the extent practicable and available, quotations from at least four leading dealers in the relevant market operating in the same financial centre, and (b) takes into account, where applicable, the liquidation and close-out of such transaction earlier than its scheduled value date or delivery date.
 5. The parties agree that the calculation of the net sum under paragraphs 3 and 4 of this Appendix is a reasonable pre-estimate of losses suffered.
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