
User's Guide to the 1994 ISDA Credit Support Annex

ISDA[®]

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THIS USER'S GUIDE DOES NOT PURPORT AND SHOULD NOT BE CONSIDERED TO BE A GUIDE TO OR EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN A PARTICULAR TRANSACTION OR CONTRACTUAL RELATIONSHIP. PARTIES SHOULD THEREFORE CONSULT WITH THEIR LEGAL ADVISORS AND ANY OTHER ADVISOR THEY DEEM APPROPRIATE PRIOR TO USING ANY ISDA STANDARD DOCUMENTATION. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR ANY DEFINITION OR PROVISION CONTAINED THEREIN MAY BE PUT.

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USER'S GUIDE TO THE 1994 ISDA CREDIT SUPPORT ANNEX

1. GENERAL

A. Background

The 1994 ISDA Credit Support Annex (the "Annex") to which this User's Guide relates was prepared for use in documenting bilateral security and other credit support arrangements between counterparties for transactions documented under an ISDA Master Agreement 1/ that selects New York law as the governing law. The Annex assumes that New York law will govern questions of perfection and priorities relating to pledged collateral. 2/ Parties wishing to select a different governing law or who will be pledging collateral under circumstances where New York law will not govern these questions should consult counsel and consider whether any modifications will be required to the Annex.

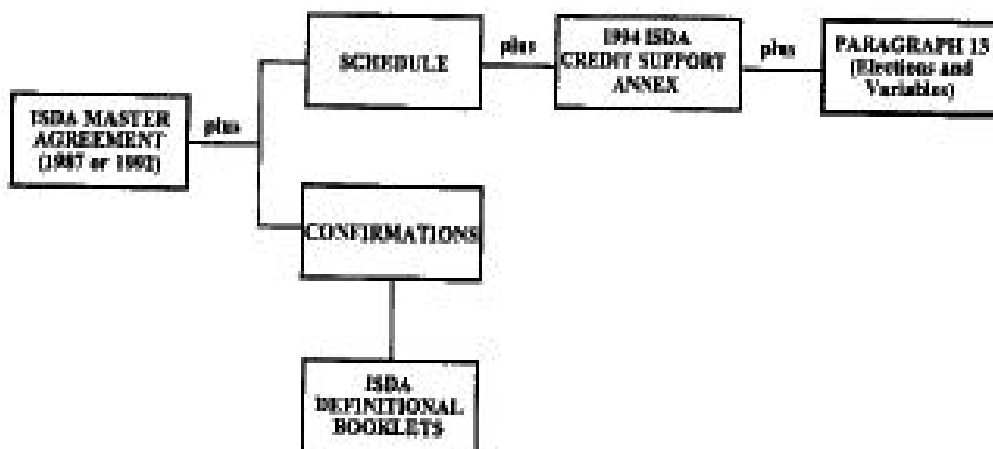
Capitalized terms not defined in this Guide have the meanings specified for such terms in the Annex or the ISDA Master Agreement, as applicable.

B. Structure

The Annex is intended to supplement and form part of the Schedule to the ISDA Master Agreement to which it relates and is designated as a "Credit Support Document" for purposes thereof. Parties to an ISDA Master Agreement should not, however, be identified as Credit Support Providers with respect to the Annex, as such term is intended only to apply to third parties. The Annex may be added to an existing Schedule to an ISDA Master Agreement through a short-form amendment, including by way of a Confirmation (*see* Section II). A form of amendment agreement that may be used to add the Annex to an existing ISDA Master Agreement (and replace an existing credit support arrangement) is set forth as Appendix A to this User's Guide. The chart illustrates how the Annex fits within the general ISDA documentation structure.

1/ The Annex may be used with any of the ISDA master agreements published to date. These master agreements include the 1992 ISDA Master Agreement (Multicurrency--Cross Border), the 1992 ISDA Master Agreement (Local Currency--Single Jurisdiction), the 1987 ISDA Interest Rate and Currency Exchange Agreement and the 1987 Interest Rate Swap Agreement (each referred to herein as the "ISDA Master Agreement"). Parties to either 1987 Master Agreement should consult Appendix G of this Guide for suggested technical modifications to the Annex.

2/ Substantially similar Federal regulations govern the perfection of security interests in book-entry securities of the various types that may be pledged under a typical security agreement. Each of these regulations expressly preempts inconsistent state law and provides, in effect, that a security interest in a Federal book-entry security may be perfected only by the procedures required "under applicable law" for securities maintained "in bearer definitive form". *See, e.g.*, Federal National Mortgage Association Regulations, 24 C.F.R. § 81.44(b). In the context of the delivery of collateral to an agent or secured party located in New York City that maintains an account with the Federal Reserve Bank of New York, "applicable law" means the New York law applicable to certificated securities.



As noted above, the Annex is a "bilateral" form in that it contemplates that each party may be required to post Eligible Credit Support to the other. In most circumstances, however, only one party will at any particular time be a Pledgor while the other party will be the Secured Party. To accommodate the potential dual capacities in which each party may act, Paragraph 1(b) of the Annex specifies that references to the Secured Party and to the Pledgor refer to each party in the capacity in which it is acting at a particular time.

C. Overview of the Annex

The Annex is designed to provide wide flexibility to parties in structuring credit support arrangements in connection with swap and other derivatives transactions. Its principal purpose, however, is to provide a means to document security arrangements involving the use of cash or readily marketable securities to secure the risk, or Exposure, that either or both parties may have under the ISDA Master Agreement to which the Annex relates. Appendices B.1 and B.2 to this User's Guide illustrate the collateralization process under the Annex.

The Annex reflects certain basic assumptions, each of which may be varied by the parties. These include an assumption that the parties will wish to secure all Obligations under the relevant ISDA Master Agreement and that the basis for determining the amount of collateral or other Eligible Credit Support that must be provided will be primarily based on the current net mark-to-market value of all Transactions (or Swap Transactions) under the ISDA Master Agreement. As described below, these assumptions can be varied by (i) altering the definition of "Obligations" to adjust the scope of the Annex, (ii) using Independent Amounts, Thresholds and Minimum Transfer Amounts or (iii) varying the definition of Credit Support Amount to adjust the basis on which the amount of risk to be covered is determined. It further assumes, unless modified by the parties, that all calculations of Delivery Amounts and Return Amounts (including the calculations of Exposure related thereto) will be made by the party seeking to make a demand.

The Annex requires parties to make certain choices in Paragraph 13 for which there is no automatic assumption, or fallback provision. Among other things, parties must select the following:

- (1) the forms of property that will constitute Eligible Credit Support, as well as the Valuation Percentages to be applied thereto (the Annex provides a check-the-box format to select cash and certain U.S. Treasury securities);
- (2) the Valuation Time (the Annex provides a check-the-box format to select from between two options, as discussed below);

(3) where Cash may be held as Posted Collateral, parties must either establish an Interest Rate that will be applied to that cash and, subject to certain conditions, paid to the Pledgor or establish procedures for the investment of that cash; and

(4) parties must specify the addresses that will apply to the Transfer of Eligible Credit Support and Posted Credit Support, as well as to notices (unless parties desire such notices to be sent to the address specified for purposes of Section 12(a) of the ISDA Master Agreement).

As discussed in detail below, Paragraph 13 of the Annex is intended to be the vehicle for parties to make the selections summarized above, as well as all other changes that they may wish to make to the printed Annex. It is hoped that parties will not simply re-type the printed Annex to reflect their changes, but rather will state those elections and variables in a separately typed Paragraph 13.

II. COMPLETING PARAGRAPH 13

Paragraph 13 of the Annex provides for parties to make various elections under and modifications to the provisions of Paragraphs 1 through 12 of the Annex. Although the form of Paragraph 13 that is part of the Annex is structured so as to accommodate a wide variety of changes, this is not intended to suggest that all the referenced provisions should be changed. Rather, parties should only include in Paragraph 13 those elections and changes that, after discussions between them, are agreed upon.

To assist parties using the Annex, set forth below is a discussion of each sub-paragraph of Paragraph 13. Parties should note that any election and variable that may be made or specified in Paragraph 13 may instead be made or specified in one or more Confirmations or other documents (*see* Paragraph 11(f)). Confirmations may be used to effect either "permanent" amendments to the relevant ISDA Master Agreement (when Confirmations satisfy all of the requirements of Section 9(b) of the ISDA Master Agreement relating to "Amendments") or "Transaction-specific" modifications (because, under Section 1(b) of the ISDA Master Agreement, any conflict between a Confirmation and another document is resolved in favor of the Confirmation for the purpose of the relevant Transaction). Parties desiring to use Confirmations to effect permanent amendments should make that intent clear in their Confirmations so as to avoid any implication that such changes will cease to apply once the Transaction covered by the Confirmation matures or is terminated. Before effecting permanent amendments to an ISDA Master Agreement through the use of Confirmations, however, parties should consider whether this approach could pose operational difficulties.

At the end of the discussion of each subparagraph of Paragraph 13, there appears a list of cross-references that identifies the Paragraphs of the Annex that relate to or specifically cite the subparagraph discussed.

A. Paragraph 13(a): Security Interest for "Obligations"

"Obligations" is the term used in the Annex to describe those obligations that are to be secured or otherwise supported by Posted Credit Support. It is defined in Paragraph 12 of the Annex as all present and future obligations of a party under the ISDA Master Agreement (including the Annex) and any additional obligations specified for that party in Paragraph 13. Paragraph 13(a) may be used to modify

the definition of Obligations, including by specifying additional obligations beyond those arising under the ISDA Master Agreement that will constitute "Obligations".

Cross-References: Paragraphs 2, 8 and 12 (definition of "Obligations").

B. Paragraph 13(b): Credit Support Obligations

1. Paragraph 13(b)(i)(A): "Delivery Amount". The "Delivery Amount" is defined, as of any Valuation Date, as the amount by which the Credit Support Amount (*see* Section II.B.3 of this Guide below) exceeds the Value of all Posted Credit Support held by the Secured Party. If the Delivery Amount exceeds the Minimum Transfer Amount applicable to the Pledgor, then, subject to any rounding convention established by the parties, the Secured Party can demand a Transfer of Eligible Credit Support having a Value equal to the Delivery Amount. Parties may modify the definition of Delivery Amount in Paragraph 13(b)(i)(A) and thereby adjust the formula for calculating the amount of Eligible Credit Support that the Pledgor must deliver to the Secured Party. In general, if a change is made to "Delivery Amount", a corresponding change should be made to "Return Amount".

Cross-References: Paragraphs 3(a), 5 and 6(d).

2. Paragraph 13(b)(i)(B): "Return Amount". The "Return Amount" is defined, as of any Valuation Date, as the amount by which the Value of all Posted Credit Support held by the Secured Party exceeds the Credit Support Amount. If the Return Amount exceeds the Minimum Transfer Amount applicable to the Secured Party, then, subject to any rounding convention established by the parties, the Pledgor can demand a Transfer of Posted Credit Support having a Value equal to the Return Amount. Parties may modify the definition of Return Amount in Paragraph 13(b)(i)(B) and thereby adjust the formula for calculating the amount of Posted Credit Support that the Secured Party must return to the Pledgor. In general, if a change is made to "Return Amount", a corresponding change should be made to "Delivery Amount".

Cross-References: Paragraphs 3(b) and 5.

3. Paragraph 13(b)(i)(C): "Credit Support Amount". Unless modified by the parties, the "Credit Support Amount" is generally the amount of Eligible Credit Support that the Secured Party is entitled to hold as of a particular Valuation Date. If, as of a particular Valuation Date, the Credit Support Amount applicable to the Secured Party exceeds the Value as of that date of all Posted Credit Support held by the Secured Party, a **Delivery Amount** exists under Paragraph 3 of the Annex. Conversely, if, as of that Valuation Date, the Value of all Posted Credit Support held by the Secured Party exceeds the Credit Support Amount applicable to the Secured Party, a **Return Amount** exists under Paragraph 3.

The Credit Support Amount is defined in Paragraph 3, for any Valuation Date, as:

- (i) the **Secured Party's Exposure** for that Valuation Date; **plus**
- (ii) the aggregate of all **Independent Amounts** applicable to the **Pledgor**, if any; **minus**
- (iii) the aggregate of all **Independent Amounts** applicable to the **Secured Party**, if any; **minus**

(iv) the **Pledgor's Threshold**.

The Credit Support Amount, however, is deemed to be zero whenever its calculation would yield a number less than zero. The elements of this definition may be summarized as follows:

(1) **Exposure:** the net amount (as estimated by the Valuation Agent for any Valuation Date or other date on which Exposure is calculated) that one party would owe to the other party if the ISDA Master Agreement were to be terminated on a complete no-fault basis (*i.e.*, as if there were a Termination Event with two Affected Parties; market participants sometimes refer to this as "full two-way payments").

(2) **Independent Amount:** an amount that may be used as an add-on to Exposure, which can reflect, among other things, the volatility of a particular Transaction, the amount of time that can pass between a determination of Exposure and the delivery of Eligible Credit Support in response to a demand relating thereto and credit concerns relating to one or both counterparties. Although Paragraph 13 contemplates that parties will specify an Independent Amount as an amount of U.S. dollars, parties may modify this provision to express an Independent Amount in terms of a different currency or as a formula (*e.g.*, as a percentage of the relevant Notional Amount). When an Independent Amount is applicable to a party, it increases the Credit Support Amount that is applicable when the other party is the Secured Party, and decreases the Credit Support Amount that is applicable when that party is the Secured Party.

When parties wish to specify in connection with a particular Transaction (or Swap Transaction) that an Independent Amount is to be Transferred at the outset of that Transaction (or Swap Transaction), they would in most cases be expected to specify in the related Confirmation both (i) the amount of the Independent Amount (or means by which it is to be determined) and (ii) unless already provided in Paragraph 13, that the relevant Trade Date (or other agreed date) is to be a Valuation Date for purposes of the Credit Support Annex.

(3) **Threshold:** the amount of risk (measured by the Secured Party's Exposure and the net amount of any Independent Amounts applicable to the parties) that a party is willing to tolerate without holding any Posted Credit Support provided by the other party (sometimes referred to as the "permitted unsecured risk"). Although Paragraph 13 contemplates that parties will specify a Threshold as an amount of U.S. dollars, parties may modify this provision to express a Threshold in terms of a different currency or as a formula (*e.g.*, as a percentage of the relevant Notional Amount).

Paragraph 13(b)(i)(C) enables the parties to substitute a different Credit Support Amount formula by stating that "Credit Support Amount" will not have the meaning specified in Paragraph 3 and then supplying an alternative definition.

Some parties may wish to modify the Credit Support Amount formula specified in Paragraph 3 to eliminate the subtraction of Independent Amounts applicable to the Secured Party from the calculation of Credit Support Amount. This could lead to having two Secured Parties and two Pledgors concurrently. Appendix C of this Guide contains suggested modifications to Paragraph 13 to achieve this result.

Cross-Reference: Paragraph 3.

4. Paragraph 13(b)(ii): "Eligible Collateral". Parties must specify the types of Eligible Collateral that a party may deliver to satisfy a Delivery Amount by checking the appropriate space(s) in Paragraph 13(b)(ii). While Cash and U.S. Treasury securities are expressly listed, parties may change this list and may add additional types of Eligible Collateral (*e.g.*, certificates issued by various government agencies such as the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and the Government National Mortgage Association) by specifying such collateral under the heading labelled "other".

In addition, parties may apply "haircuts" to the Value of Eligible Collateral by specifying a "Valuation Percentage" less than 100% for particular types of Eligible Collateral. Applying a Valuation Percentage to an item of Eligible Collateral will reduce the Value attributed to that item. To avoid any ambiguity, parties that do not wish to discount the Value of Eligible Collateral should specify the Valuation Percentage to be 100% in the appropriate space(s). Haircuts are often used to create a "cushion" for certain types of collateral that the parties conclude may be relatively illiquid or subject to volatility.

Cross-References: Paragraphs 3, 4(b), 4(d), 5, 7, 9 and 12 (definitions of "Eligible Collateral", "Eligible Credit Support", "Pledgor", "Posted Collateral", "Secured Party", "Transfer", "Valuation Percentage" and "Value").

5. Paragraph 13(b)(iii): "Other Eligible Support". In addition to Eligible Collateral, parties may specify that certain other types of credit support may be pledged or provided by either or both parties. For example, a letter of credit, a financial guaranty or a surety bond could be specified as "Other Eligible Support" for either or both parties. Parties that select this option must also complete Paragraph 13(j) so that the "Value" of such support may be properly calculated and the "Transfer" mechanics are properly specified (*see* Section II.J of this Guide below). In addition, parties should carefully consider the events of default and related grace periods, if any, that should relate to a failure to comply with the requirements relating to Other Eligible Support, since Paragraph 7 of the Annex and Section 5(a)(iii)(1) of the 1992 ISDA Master Agreement do not address these issues.

Cross-Reference: Paragraph 12 (definition of "Eligible Credit Support").

6. Paragraph 13(b)(iv): Thresholds.

a. Paragraph 13(b)(iv)(A): "Independent Amount". As discussed above in Section II.B.3(2) of this Guide, the "Independent Amount" is an amount that may be used as an add-on to Exposure to address, among other things, the volatility of a particular Transaction, the amount of time that can pass between a determination of Exposure and the delivery of Eligible Credit Support in response to a demand relating thereto and credit concerns relating to one or both counterparties. While parties may specify an Independent Amount for either or both parties in Paragraph 13(b)(iv)(A), parties also may reserve this specification to one or more Confirmations. As noted above, an Independent Amount can be a specified U.S. dollar (or other currency) amount or can be expressed as a formula (*e.g.*, as a percentage of the relevant Notional Amount). If an Independent Amount is not specified, it is deemed to be zero.

Cross-References: Paragraphs 3 and 12 (definition of "Independent Amount").

b. Paragraph 13(b)(iv)(B): "Threshold". As discussed above in Section II.B.3(3) of this Guide, the "Threshold" is an amount that may be used to represent the extent to which a party is willing to be in-the-money under the ISDA Master Agreement before the other party may be obligated to deliver Eligible Credit Support (*i.e.*, the permitted unsecured risk). As noted above, a Threshold can be a specified U.S. dollar (or other currency) amount or can be expressed as a formula (*e.g.*, as a percentage of the relevant Notional Amount). This amount is often related to the credit quality of the party and may be set to vary depending upon the credit rating of that party. If a Threshold is not specified, it is deemed to be zero. Appendix D of this Guide sets forth an example of the use of Threshold.

Under the Annex, if as of the Valuation Time for a particular Valuation Date the Secured Party's Exposure exceeds the Pledgor's "Threshold", then (assuming no Independent Amounts are specified) a Credit Support Amount exists and (assuming no Posted Collateral is held) the Secured Party can demand that the Pledgor Transfer Eligible Credit Support in an amount equal to the amount of that excess (assuming it exceeds any Minimum Transfer Amount and is not altered by any rounding convention established by the parties). For example (and based on the foregoing assumptions), if Party A's Exposure is \$3 and Party B's Threshold is \$4, then Party B is not obligated to deliver any Eligible Credit Support; however, if Party A's Exposure rises to \$5 as of the Valuation Time for the next Valuation Date, then (based on the above assumptions) Party A can demand that Party B Transfer \$1 of Eligible Credit Support (*i.e.*, the amount by which Party A's Exposure (\$5) exceeds Party B's Threshold (\$4)).

Some market participants may prefer to require the Transfer of Eligible Credit Support for the entire amount of a party's Exposure once that party's Exposure reaches a certain amount, rather than requiring the Transfer of only the amount of the excess of Exposure over the amount of the Threshold (again, this assumes that no Independent Amounts are specified and there is no Posted Credit Support). This may be accomplished through the use of a "Minimum Transfer Amount" (*see* Section II.B.6.c of this Guide below). It may also be accomplished through the use of a rounding convention (*see* Section II.B.6.d of this Guide below). Appendix E of this Guide sets forth certain examples of the use of Minimum Transfer Amount and the rounding variable.

Cross-References: Paragraphs 3 and 12 (definition of "Threshold").

c. Paragraph 13(b)(iv)(C): "Minimum Transfer Amount". Parties may specify a dollar amount as the "Minimum Transfer Amount" for either or both parties so that a party will not be obligated to Transfer a "nuisance" amount of Eligible Credit Support or Posted Credit Support. This amount is often related to the credit quality of the party and, as with the Threshold, may be set to vary depending upon the credit rating of that party. If a Minimum Transfer Amount is not specified, it is deemed to be zero.

Under the Annex, once the Minimum Transfer Amount is reached for a party, that party is obligated to Transfer the full amount of credit support required (*i.e.*, the Delivery Amount or Return Amount), subject to rounding, if the parties so agree. For example, if on a particular Valuation Date Party A's Delivery Amount is \$4 and Party B's Minimum Transfer Amount is \$5, then Party B will not be obligated to Transfer any Eligible Credit Support; however, if Party A's Delivery Amount rises to \$10 on the next Valuation Date, then Party B will be obligated to Transfer the full \$10 of Eligible Credit Support because \$10 exceeds the \$5 Minimum Transfer Amount, assuming the Threshold is set at zero, the Secured Party is not then holding Posted Credit Support and the

rounding convention, if any, specified by the parties, does not give rise to an obligation to deliver a different amount.

Because the use of Minimum Transfer Amount only establishes a "floor", it does not eliminate the possibility that parties will be required to deliver uneven amounts of Eligible or Posted Collateral. As discussed in the next section, parties must establish a rounding convention to eliminate such requirements. Additionally, as discussed below, parties can use rounding as a substitute for Minimum Transfer Amount.

Appendix E of this Guide sets forth an example of the use of Minimum Transfer Amount.

Cross-References: Paragraphs 3 and 12 (definition of "Minimum Transfer Amount").

d. Paragraph 13(b)(iv)(D) : Rounding. Parties may establish a rounding convention to avoid the obligation to deliver Eligible Credit Support pursuant to a Delivery Amount or Posted Credit Support pursuant to a Return Amount in an amount that is otherwise uneven or difficult to obtain in the form requested (*e.g.*, \$1,501,198.12) or, as described below, as a substitute for a Minimum Transfer Amount. Parties utilizing the rounding variable may specify a rounding convention or select one of the following options: (i) round the Delivery Amount and Return Amount down to the nearest integral multiple specified or (ii) round the Delivery Amount up and the Return Amount down to the nearest integral multiple specified. If no rounding convention is specified, then the Delivery Amount and the Return Amount will not be rounded.

Parties would not ordinarily be expected to specify that both Delivery Amounts and Return Amounts are to be rounded up, as this could create conflicting obligations to Transfer collateral and result in a Secured Party being undersecured. For example, if the parties specify that both Delivery Amounts and Return Amounts will be rounded up to the nearest multiple of \$10, and, on a particular Valuation Date, Exposure equals \$11, then, assuming the parties fail to specify any Minimum Transfer Amount, the Pledgor will have an obligation to deliver \$20 of Eligible Credit Support to the Secured Party pursuant to a Delivery Amount. If on a subsequent Valuation Date Exposure remains at \$11, the Secured Party will nevertheless have an obligation to Transfer \$10 of Posted Credit Support to the Pledgor pursuant to a Return Amount, thereby leaving the Secured Party undersecured by \$1.

As noted above and described further in Appendix E, market participants may use a rounding convention as an alternative to a Minimum Transfer Amount. For example, the parties could specify that (i) Delivery Amounts and Return Amounts below a specified level would be rounded down to zero and (ii) Delivery Amounts above that level would be rounded up and Return Amounts above that level would be rounded down, in each case to the nearest integral amount specified by the parties. In this way, market participants can obtain the same "minimum" that using a Minimum Transfer Amount would provide, without having to specify a separate rounding convention to eliminate uneven Delivery Amounts or Return Amounts.

Cross-Reference: Paragraph 3.

C. Paragraph 13(c): Valuation and Timing

1. Paragraph 13(c)(i): "Valuation Agent". The Valuation Agent is responsible for calculating the Delivery Amount and the Return Amount and notifying the parties of these calculations pursuant to Paragraph 4(c) so that the Pledgor and the Secured Party, as applicable, fulfill their credit support obligations under Paragraph 3.

The parties may specify that the Valuation Agent is a third party or is one of the parties to the Annex for all purposes. If the parties do not specify either of these options in Paragraph 13(c)(i), then the Valuation Agent is the party making the demand under Paragraph 3; as a result, the Secured Party would be the Valuation Agent for purposes of Paragraph 3(a), while the Pledgor would be the Valuation Agent for purposes of Paragraph 3(b).

Cross-References: Paragraphs 3, 4, 5, 6(d) and 12 (definition of "Valuation Agent").

2. Paragraph 13(c)(ii): "Valuation Date". The frequency of "Valuation Dates" represents the frequency of dates on which the Transactions (or Swap Transactions) under the ISDA Master Agreement and the Posted Credit Support are marked-to-market. On each Valuation Date or other date for which Exposure or Value is calculated, the Valuation Agent is required to calculate, as of the Valuation Time (*see* below), the Exposure, the Value of Posted Credit Support (if any), the Credit Support Amount, the Delivery Amount (if any) and the Return Amount (if any), and then notify the parties (*see* Paragraph 4(c)).

Parties must complete Paragraph 13(c)(ii) since there is no fallback position if the blank space is not completed. Parties may choose specific dates (*e.g.*, the 15th of each month or, if that date is not a Local Business Day, the Local Business Day immediately following that date) or time periods (*e.g.*, daily, weekly, monthly) or they may instead use a formula (*e.g.*, any Local Business Day which, if treated as a Valuation Date, would result in a Delivery Amount or Return Amount). 3/

Cross-References: Paragraphs 3, 4(c), 5, 6(d) and 12 (definition of "Valuation Date").

3. Paragraph 13(c)(iii): "Valuation Time". The "Valuation Time" is the time as of which the Valuation Agent calculates the Exposure and the Value of Posted Credit Support (if any) for purposes of determining if there is a Delivery Amount or a Return Amount under Paragraph 3. It is also the time as of which the Secured Party calculates the Exposure and the Value of Posted Credit Support (if any) for purposes of determining if the Pledgor is entitled to receive Distributions and the Interest Amount under Paragraph 6(d).

The parties must specify whether the Valuation Time will be (i) the close of business on the Valuation Date (for purposes of Paragraph 3) or date of calculation (for purposes of Paragraph 6(d)),

3/ If parties specify (by formula or otherwise) that each Local Business Day is to be a Valuation Date (*i.e.*, a daily mark-to-market), they should also provide for the Valuation Agent to make its calculations pursuant to Paragraph 4(c) on a basis that will allow for daily Transfers of Eligible Credit Support and Posted Credit Support. If the Valuation Agent is one of the parties, it may also be useful to make clear that a notice of the Valuation Agent's calculations can be combined with a demand for a Delivery Amount or a Return Amount.

(ii) the close of business on the Local Business Day before the Valuation Date (for purposes of Paragraph 3) or the Local Business Day before the date of calculation (for purposes of Paragraph 6(d)) or (iii) determined in accordance with some other means selected by the parties. Once the parties have made this election (or otherwise specified a Valuation Time), the Annex requires that (unless this provision is modified) the calculation of both Exposure and Value be made as of approximately the same time on the date chosen.

Cross-References: Paragraphs 4(c), 6(d) and 12 (definition of "Valuation Time").

4. Paragraph 13(c)(iv): "Notification Time". The "Notification Time" is the time by which, among other things, (i) the Valuation Agent must notify the parties of its calculations under Paragraph 4(c) on the Local Business Day following a Valuation Date and (ii) a party must make a demand for a Transfer of Eligible Credit Support or Posted Credit Support, as applicable, in order to be able to require the other party to make the appropriate Transfer not later than the close of business on the next Local Business Day. (If a demand for a Transfer is made after the Notification Time, then the Transfer is not required to be made until the close of business on the second Local Business Day following the day on which the demand was made). ^{4/}

While the parties may specify any time as the Notification Time, if no such specification is made, then the Notification Time will be 1:00 p.m., New York time, on a Local Business Day. Parties may wish to consider making the Notification Time for the Valuation Agent's calculations earlier than the Notification Time for demands for the Transfer of Eligible Credit Support or Posted Credit Support, at least in cases where a third party acts as the Valuation Agent. In this way, a party receiving notice of the Valuation Agent's calculations will be able to make a demand on the same day for a Transfer on the next Local Business Day.

Cross-References: Paragraphs 4(b), 5 and 12 (definition of "Notification Time").

D. Paragraph 13(d): Conditions Precedent and Secured Party's Rights and Remedies

Each party has certain specified rights under the Annex (unless otherwise specified in Paragraph 13), including:

(i) the right of a party to make a demand for the Transfer of Eligible Credit Support or Posted Credit Support, as applicable, under Paragraph 3 or 5;

(ii) the right of the Pledgor to deliver Substitute Credit Support for Posted Credit Support under Paragraph 4(d);

(iii) the right of a party under Paragraph 6(c) to use Posted Collateral that it holds; and

^{4/} The timing of any required Transfer is subject to the satisfaction of the applicable conditions precedent (Paragraph 4(a)) and the absence of a dispute (Paragraph 5). See Appendix B.1 for an illustration of the timing structure under the Annex.

(iv) the right of the Pledgor to receive a Transfer of Distributions and the Interest Amount under Paragraph 6(d).

For a party to have these rights, however, the Annex requires that certain conditions precedent be satisfied (*see* Paragraph 4(a)). These conditions include the absence of an Event of Default, Potential Event of Default and Early Termination Date (for which any unsatisfied payment obligations exist), as well as the absence of any "Specified Condition". The existence of a "Specified Condition" with respect to the Pledgor also will trigger the Secured Party's rights and remedies under Paragraph 8(a) and a Specified Condition with respect to the Secured Party will trigger the Pledgor's rights and remedies under Paragraph 8(b).

Paragraph 13(d) enables the parties to designate one or more Termination Events (or other events selected by the parties) as a "Specified Condition". Parties are also free to define "Specified Condition" differently for certain purposes under the Annex. For example, Illegality could be designated as a Specified Condition for purposes of Paragraph 4(a) but not for purposes of Paragraph 8(a) or 8(b), while "Credit Event Upon Merger" or an Additional Termination Event based on a ratings downgrade below a certain level could be designated as a Specified Condition for purposes of the Secured Party's rights and remedies under Paragraph 8(a) and the Pledgor's rights and remedies under Paragraph 8(b). In general, parties may designate any Termination Event as a Specified Condition; however, parties should only specify an Additional Termination Event as a Specified Condition for purposes of Paragraph 8(a) or 8(b) if it is also an Additional Termination Event for purposes of designating an Early Termination Date under the ISDA Master Agreement.

Cross-References: Paragraphs 4, 6, 8 and 12 (definition of "Specified Condition").

E. Paragraph 13(e): Substitution

1. Paragraph 13(e)(i): "Substitution Date". Under Paragraph 4(d), upon notice by the Pledgor specifying the items to be exchanged and following the Transfer of the Substitute Credit Support to the Secured Party, the Secured Party must Transfer to the Pledgor the items of Posted Credit Support specified in such notice, not later than the Substitution Date. The "Substitution Date" is defined in Paragraph 4(d)(ii) as the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13. By changing the definition of Substitution Date, the parties may extend or reduce the time period in which the Secured Party must make its Transfer of Posted Credit Support. This may be desirable for some or all types of Posted Credit Support, since the parties may require more or less time to Transfer certain types of Posted Credit Support.

Cross-Reference: Paragraph 4(d).

2. Paragraph 13(e)(ii): Consent. If specified as applicable, Paragraph 13(e)(ii) will preclude the Pledgor from delivering Substitute Credit Support for Posted Credit Support without first obtaining the Secured Party's consent. Parties should consider requiring such consent by selecting "applicable" in

Paragraph 13(e)(ii) where substitution without consent could give rise to a registration requirement to perfect the security interest in Posted Collateral. ^{5/}

Cross-Reference: Paragraph 4(d).

F. Paragraph 13(f): Dispute Resolution

1. Paragraph 13(f)(i): "Resolution Time". The "Resolution Time" is the time by which parties involved in a dispute under Paragraph 5 must resolve their dispute; if they do not resolve their dispute by the Resolution Time, then the Valuation Agent (which may be the party making the demand) performs certain recalculations under Paragraph 5.

While the parties may choose a longer period in which to resolve their dispute, if no specification is made then the Resolution Time will be 1:00 p.m., New York time, on the Local Business Day following the date on which the notice is given that gives rise to a dispute under Paragraph 5. In order to eliminate any ambiguity over the meaning of this fallback provision, parties may wish to change the language in Paragraph 13(f)(i) so that it refers to "the date on which notice of the dispute is given under Paragraph 5", rather than "the date on which notice is given that gives rise to a dispute under Paragraph 5". The latter phrase could be taken to be a reference to the Valuation Agent's notice of Exposure or Value, which is not intended. Parties may also wish to specify that the requirement to Transfer an undisputed amount of Eligible Credit Support or Posted Credit Support will not arise prior to the time that otherwise applied to that Transfer pursuant to a demand made under Paragraph 3. The provisions of clause (2) of Paragraph 5 could under certain circumstances have advanced the timing of that Transfer.

Cross-References: Paragraphs 5 and 12 (definition of "Resolution Time").

2. Paragraph 13(f)(ii): "Value". Paragraph 5 requires that the parties provide for a means by which the Valuation Agent can recalculate the Value of Posted Credit Support and the Value of any Transfer of Eligible Credit Support in the event of a dispute. If this provision is not completed, the Valuation Agent will be unable to resolve disputes involving the Value of Posted Collateral.

One alternative that parties may wish to specify is as follows: "Disputes over Value will be resolved by the Valuation Agent seeking three mid-market quotes as of the relevant Valuation Date or date of Transfer from parties that regularly act as dealers in the securities or other property in question. The Value will be the arithmetic mean of the quotes received by the Valuation Agent."

Cross-References: Paragraphs 3, 4, 5, 11 and 12 (definition of "Value").

3. Paragraph 13(f)(iii): Alternative. Paragraph 5(i) states how a dispute involving the Valuation Agent's calculation of a Delivery Amount or a Return Amount is handled. Simply stated, the Valuation Agent recalculates Exposure for the disputed Transactions by seeking four actual quotations at mid-

^{5/} For example, if one or both parties is an English bank, they may wish to consult with counsel to determine whether, in the particular circumstances, the unlimited right to substitute could affect the enforceability of the security interest granted under the Annex.

market from Reference Market-makers for purposes of calculating Market Quotation and then takes the arithmetic mean of those quotes. ^{6/} The Valuation Agent recalculates the Value of Posted Credit Support (if disputed) by using the procedures in Paragraph 13(f)(ii) and then recalculates the Delivery Amount or Return Amount, as applicable.

If the parties elect to change this dispute resolution procedure, they should specify a different procedure in Paragraph 13(f)(iii).

Cross-Reference: Paragraph 5.

G. Paragraph 13(g): Holding and Using Posted Collateral

1. Paragraph 13(g)(i): Eligibility To Hold Posted Collateral; Custodians. Under Paragraph 6(b), each party, as the Secured Party, is entitled to hold Posted Collateral, provided that it satisfies the conditions specified in Paragraph 13(g)(i). In addition, a Custodian (if any) appointed by a party also will be entitled to hold Posted Collateral, provided that the Custodian satisfies the conditions specified in Paragraph 13(g)(i).

One condition specified in Paragraph 13(g)(i)(1) of the Annex is that the party must not be a Defaulting Party in order for that party to be entitled to hold Posted Credit Support. Parties should also consider whether to specify as a condition that all Posted Collateral may be held only in certain jurisdictions (or, in the case of U.S. Treasury or agency securities, at institutions with accounts at specified Federal Reserve Banks). Parties must add any additional conditions that they elect to include, such as a minimum credit rating requirement. Conditions may also be set for the Custodian of a party such as a credit rating or total assets requirement. Space is also provided for each party to specify a particular entity that initially will serve as its Custodian.

Cross-References: Paragraphs 6(b), 7(i) and 12 (definition of "Custodian").

2. Paragraph 13(g)(ii): Use of Posted Collateral. Under Paragraph 6(c), the Secured Party has the right to use Posted Collateral as set forth in Paragraph 6(c)(i) and (ii), provided that the Secured Party or its Custodian (if any), satisfies the conditions specified in Paragraph 13(g)(i), and provided further that this right is not restricted in Paragraph 13(g)(ii). Among other things, Paragraph 6(c)(i) gives the Secured Party the right to transfer the entire ownership interest in the Posted Collateral or to pledge or rehypothecate it. Parties wishing to modify this provision may, for example, completely restrict the Secured Party's right to use Posted Collateral, partially restrict this right by listing the prohibited actions or restrict this right to the extent the Secured Party falls below a specified credit rating.

Parties should carefully consider the risks attendant to the rehypothecation or other disposition of Posted Collateral both to the Secured Party and to the Pledgor and consult with

^{6/} If fewer than four quotations are available for a particular disputed Transaction (or Swap Transaction), then the Valuation Agent is permitted to use fewer than four quotations for that Transaction (or Swap Transaction), and if no quotation is available, then the Valuation Agent's original calculations are used.

their legal advisors before documenting a Transaction (or Swap Transaction) under the Annex that permits the rehypothecation or other disposition of Posted Collateral.

Cross-Reference: Paragraph 6(c).

H. Paragraph 13(h): Distributions and Interest Amount

1. Paragraph 13(h)(i): "Interest Rate". The "Interest Rate" is the rate that the parties agree will be applied to Posted Collateral in the form of Cash and, subject to certain conditions, paid to the Pledgor. The Parties must complete this space if Cash is an acceptable type of Eligible Collateral and the parties choose not to change (through paragraph 13(h)(iii)) the provision entitling the Pledgor to the Interest Amount. Under Paragraphs 6(d)(ii) and 12 of the Annex, the Interest Amount for any Interest Period is the sum of the daily interest calculations using the equivalent of an Actual/360 day count fraction.

The Annex also provides in Paragraph 11(a) for Default Interest to be paid by the Secured Party in the event that it fails to Transfer Posted Collateral or the Interest Amount when it is required to do so. In contrast to the Interest Rate provisions of Paragraph 6(d)(ii), Default Interest under Paragraph 11(a) of the Annex is determined in the same manner as is provided for under the ISDA Master Agreement which uses the Default Rate and an Actual/Actual day count fraction (this provision, however, only applies to the Secured Party because Posted Collateral is treated as property in which the Pledgor has a residual interest; while the Secured Party is entitled to hold it, use it to satisfy Obligations and may be entitled to transfer the entire ownership interest to a third party, the Pledgor is entitled to earnings in the form of interest thereon).

Parties should consult with their tax advisors as to whether any withholding taxes would result from the receipt of income on Posted Collateral or from the payment of Distributions or Interest Amounts and the characterization of such payments. Generally, no withholding tax would apply if both parties and the issuer of the Posted Collateral are organized in the United States. Similarly, it is expected that no withholding tax would normally apply if the parties and the issuer of the Posted Collateral are all tax residents of a single non-U.S. country, although parties should consult advisors in such a country concerning their particular circumstances. Parties should refer to Section III of this Guide for additional information relating to tax considerations.

If any withholding taxes apply with respect to Posted Collateral, Paragraph 10(b) requires that the Pledgor pay such withholding taxes.

2. Paragraph 13(h)(ii): Transfer of Interest Amount. Provided that the Secured Party would not become improperly undersecured by the Transfer of any Interest Amount (treating each date of calculation as a Valuation Date), Paragraph 13(h)(ii) states that the Interest Amount will be Transferred to the Pledgor on the last Local Business Day of each calendar month and on any Local Business Day

that Posted Collateral in the form of Cash is Transferred to the Pledgor pursuant to Paragraph 3(b). The parties may modify the timing of Interest Amount payments through Paragraph 13(h)(ii). ^{7/}

3. Paragraph 13(h)(iii): Alternative to Interest Amount. The parties may elect not to provide the guaranteed rate of return on Posted Collateral in the form of Cash that is achieved through the use of an Interest Rate and Interest Amount. The parties may specify, for example, that the Secured Party will invest Posted Collateral in the form of Cash in good faith and Transfer the proceeds of that investment to the Pledgor pursuant to some agreed schedule instead of the Interest Amount that otherwise would have been Transferred pursuant to Paragraph 13(h)(ii).

Cross-References: Paragraphs 6(d) and 12 (definitions of "Interest Amount", "Interest Rate" and "Interest Period").

I. Paragraph 13(i): Additional Representation(s)

Paragraph 13(i) allows the parties to provide for representations in addition to those set forth in Paragraph 9. Any additional representations will be deemed to be repeated as of each date on which a party, as the Pledgor, Transfers Eligible Collateral. Appendix F of this Guide sets forth suggested modifications to Paragraph 13 for parties dealing with U.S. banks or thrift institutions subject to the Federal Deposit Insurance Act ("FDIA").

Cross-References: Paragraphs 7(iii) and 9.

J. Paragraph 13(j): Other Eligible Support and Other Posted Support

1. Paragraph 13(j)(i): "Value". Parties that elect to permit Other Eligible Support to be included under the Annex must set forth in Paragraph 13(j)(i) how that Other Eligible Support is valued. For example, if a letter of credit qualifies as Other Eligible Support, then the parties could define its "Value" as the amount then available to be unconditionally drawn upon by the Secured Party (subject only to the conditions to drawing specified in the letter of credit documentation). Without this information, the Valuation Agent or the Secured Party will be unable to perform the calculations under Paragraphs 3, 5 and 6(d).

^{7/} Pursuant to Paragraph 6(d)(i) of the Annex, all Distributions which the Secured Party receives or is deemed to receive on a Local Business Day must (subject to the satisfaction of all applicable conditions) be Transferred to the Pledgor, not later than the following Local Business Day, to the extent that a Delivery Amount would not be created or increased as a result of such a Transfer, as calculated by the Valuation Agent (and the date of receipt or the date of Transfer, as elected by the Valuation Agent, will be deemed to be a Valuation Date for this purpose). Failure of a party to Transfer Distributions pursuant to Paragraph 6(d)(i) will be an Event of Default under Paragraph 7(i) by virtue of the fact that the definition of "Posted Collateral" expressly includes "Distributions". The parties may modify the timing of Transfers of Distributions (or the Valuation Date relating thereto) through Paragraph 13(m).

2. Paragraph 13(j)(ii): "Transfer". Parties that elect to permit Other Eligible Support to be included under the Annex must set forth in Paragraph 13(j)(ii) how that Other Eligible Support is "Transferred". For example, if a letter of credit qualifies as Other Eligible Support, then the parties could define an effective "Transfer" with respect to that letter of credit to mean the creation of an unconditional right of the Secured Party for whose benefit the letter of credit is established to draw upon that letter of credit (subject only to the conditions to drawing specified in the letter of credit documentation). Without this information, there is ambiguity surrounding when the Other Eligible Support becomes Other Posted Support, thereby making it difficult for the Valuation Agent or the Secured Party to perform the calculations under Paragraphs 3, 5 and 6(d).

Cross-References: Paragraph 12 (definitions of "Value" and "Transfer").

K. Paragraph 13(k): Demands and Notices

Paragraph 13(k) states that all demands, specifications and notices to be made under the Annex will be made pursuant to the section for "Notices" in the ISDA Master Agreement, unless otherwise specified in Paragraph 13(k).

L. Paragraph 13(l): Addresses for Transfers

Parties to the Annex must complete Paragraph 13(1) to identify where Transfers of Eligible Credit Support, the Interest Amount (if applicable) and Posted Credit Support should be sent.

M. Paragraph 13(m): Other Provisions

Paragraph 13(m) provides the parties with a place to include additional provisions not covered elsewhere in the Annex, much like Part 5 of the Schedule to the ISDA Master Agreement. Appendix G to this Guide sets forth certain suggested modifications that parties to a 1987 ISDA Master Agreement should include.

III. TAX CONSIDERATIONS

A. Clarification of Paragraph 10(b)

Paragraph 10(b) of the Annex provides that the Pledgor will pay all taxes, assessments or any charges that are imposed with respect to Posted Credit Support except for taxes, assessments or charges that result from the Secured Party's exercise of rights under Paragraph 6(c). Paragraph 6(c) gives the Secured Party broad rights with respect to the Posted Collateral in the absence of a default by the Secured Party, including, among other things, the right to sell, pledge, assign, invest or use the Posted Collateral. The exception at the end of Paragraph 10(b) was intended to hold the Secured Party responsible for any transfer, recording or similar taxes resulting from the Secured Party's voluntary exercise of rights pursuant to Paragraph 6(c).

The exception at the end of Paragraph 10(b) was not intended, however, to require the Secured Party to bear any capital gain, income, franchise, withholding or similar taxes as a consequence of the voluntary exercise of its rights under Paragraph 6(c), as those types of taxes relate to the Pledgor's ownership of the Posted Credit Support and would normally be the responsibility of the Pledgor. In fact, parties should note that the exercise of rights by the Secured Party under Paragraph 6(c) would not cause the Pledgor to recognize gain or loss for United States Federal income tax purposes because the Annex was drafted to comply with the requirements of Section 1058 of the Internal Revenue Code of 1986, as amended. Nevertheless, in order to clarify the intention that the exception at the end of Paragraph 10(b) was intended to apply only to transfer or similar taxes, parties may wish to add the following language to Paragraph 13(m):

Amendment of Paragraph 10(b). Paragraph 10(b) of this Annex is modified to read as follows:

Posted Credit Support. The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit Support held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for transfer, recording or similar taxes that result from the exercise of the Secured Party's rights under Paragraph 6(c)

B. Withholding Taxes

Parties should consult with their tax advisors as to whether any withholding taxes would result from the receipt of income on Posted Collateral or from the payment of Distributions or Interest Amounts and the characterization of such payments. Generally, no withholding tax would apply if both parties and the issuer of the Posted Collateral are organized in the United States. Similarly, it is expected that no withholding tax would normally apply if the parties and the issuer of the Posted Collateral are all tax residents of a single non-U.S. country, although parties should consult advisors in such a country concerning their particular circumstances.

IV. SUMMARY

As described above, Paragraph 13 of the Annex provides the parties with the ability to modify and tailor certain provisions of the Annex to fit their specific credit support arrangements; however, some of the elections and variables of Paragraph 13 must be completed since the Annex does not provide for a back-up or fallback position if the parties fail to do so. The following is a brief summary of those elections and variables of Paragraph 13 that the parties must complete, as well as the result if the parties choose not to complete certain elections and variables with fallback positions:

1. Paragraph 13(a): Security Interest for "Obligations". If no modification is made, then the Annex only secures present and future obligations under the ISDA Master Agreement.

2. Paragraph 13(b): Credit Support Obligations.

a. Paragraph 13(b)(i): Delivery Amount, Return Amount and Credit Support Amount. If the parties do not specify an alternative definition for Delivery Amount, Return Amount or Credit Support Amount, then these terms will have the meanings provided in the Annex.

b. Paragraph 13(b)(ii): Eligible Collateral. In order for collateral of any type to constitute "Eligible Collateral", it must be so specified in Paragraph 13(b)(ii). The relevant "Valuation Percentage" applicable thereto should also be specified in Paragraph 13(b)(ii). Parties may alternatively select acceptable types of "Other Eligible Support" under Paragraph 13(b)(iii) as the sole types of credit support under the Annex.

c. Paragraph 13(b)(iii): Other Eligible Support. In order for other arrangements to constitute "Other Eligible Support", the parties must specify the acceptable types of "Other Eligible Support" under Paragraph 13(b)(iii).

d. Paragraph 13(b)(iv)(A), (B), (C) and (D): Thresholds. If the parties do not specify amounts for the "Independent Amount", the "Threshold" or the "Minimum Transfer Amount", then these amounts are deemed to be zero. If no rounding convention is specified, then the Delivery Amount and the Return Amount will not be rounded.

3. Paragraph 13(c): Valuation and Timing.

a. Paragraph 13(c)(i): "Valuation Agent". If the parties do not specify a Valuation Agent, then the Valuation Agent is the party making the demand under Paragraph 3.

b. Paragraph 13(c)(ii): "Valuation Date". The parties must specify how or when the Valuation Dates will occur.

c. Paragraph 13(c)(iii): "Valuation Time". The parties must specify when the Valuation Time will be.

d. Paragraph 13(c)(iv): "Notification Time". If the parties do not specify the Notification Time, then the Notification Time will be 1:00 p.m., New York time, on a Local Business Day.

4. Paragraph 13(d): Conditions Precedent and Secured Party's Rights and Remedies. If the parties do not designate any Termination Events as a "Specified Condition", then Specified Conditions will not apply.

5. Paragraph 13(e): Substitution.

a. Paragraph 13(e)(i): "Substitution Date". If the parties do not specify a "Substitution Date", then the Substitution Date will be the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support.

b. Paragraph 13(e)(ii): Consent. If the parties do not specify that Paragraph 13(e)(ii) is applicable, then the Pledgor will be free to deliver Substitute Credit Support for Posted Credit Support without the Secured Party's consent.

6. Paragraph 13(f): Dispute Resolution.

a. Paragraph 13(f)(i): "Resolution Time". If the parties do not specify the Resolution Time, then the Resolution Time will be 1:00 p.m., New York time, on the Local Business Day

following the date on which the notice is given that gives rise to a dispute under Paragraph 5. To eliminate ambiguity, parties should consider revising the language of Paragraph 13(f)(i) to refer to "the date on which notice of the dispute is given under Paragraph 5".

b. Paragraph 13(f)(ii): "Value". The parties must provide for a method to determine the Value of Posted Credit Support other than Cash in the event of a dispute.

c. Paragraph 13(f)(iii): Alternative. If the parties do not specify an alternative method for the Valuation Agent to recalculate the Delivery Amount and the Return Amount in the event of a dispute, then the procedures specified in Paragraph 5 will govern.

7. Paragraph 13(g): Holding and Using Posted Credit Support.

a. Paragraph 13(g)(i): Eligibility to Hold Posted Collateral; Custodians. If the parties do not specify any conditions to holding Posted Collateral, then the only condition that will apply is that a party not be a Defaulting Party. In addition, if the parties want the ability to use a Custodian, then they must identify an entity that may act as its Custodian or criteria (*e.g.*, credit rating, total assets) for an acceptable Custodian.

b. Paragraph 13(g)(ii): Use of Posted Collateral. If the parties do not restrict a party's right to use Posted Collateral, then that party will have the rights specified in Paragraph 6(c).

8. Paragraph 13(h): Distributions and Interest Amount.

a. Paragraph 13(h)(i): "Interest Rate". If Cash is an acceptable type of Eligible Collateral and the return on that Cash is to be the Interest Amount, then the parties must specify the rate that the Pledgor of that Cash will receive.

b. Paragraph 13(h)(ii): Transfer of Interest Amount. If Cash has been pledged to the Secured Party, then the return on that Cash is to be the Interest Amount and if the parties have not specified the time at which that Interest Amount is to be transferred to the Pledgor, then it will be transferred on the last Local Business Day of each calendar month and on any Local Business Day that Posted Collateral in the form of Cash is returned to the Pledgor pursuant to Paragraph 3(b).

c. Paragraph 13(h)(iii): Alternative to Interest Amount. If the parties do not specify an alternative to the Interest Amount and Cash has been pledged to the Secured Party, then the Pledgor will be entitled to the Interest Amount.

9. Paragraph 13(i): Additional Representation(s). If the parties do not specify any additional representations, then the only representations in the Annex that will apply are those contained in Paragraph 9.

10. Paragraph 13(j): Other Eligible Support and Other Posted Support. If the parties specify types of Other Eligible Support, then they must define "Value" and "Transfer" with respect to that Other Eligible Support.

11. Paragraph 13(k) : Demands and Notices. If the parties do not provide information regarding the making of demands, specifications and notices, then these will be made as specified in the section for "Notices" in the ISDA Master Agreement.

12. Paragraph 13(l) : Addresses for Transfers. The parties must specify the location for Transfers of Eligible Credit Support, the Interest Amount and Posted Credit Support.

13. Paragraph 13(m) : Other Provisions. The parties may specify any additional provisions not covered elsewhere in the Annex, much like Part 5 of the Schedule to the ISDA Master Agreement.

**FORM OF AMENDMENT
TO ISDA MASTER AGREEMENT * ¹**

dated as of

..... and

have previously entered into that certain ISDA Master Agreement *, dated as of 19..... (the "Agreement"), which Agreement includes the Schedule and all Confirmations exchanged between the parties confirming the Transactions (or Swap Transactions) thereunder. The parties have now agreed to amend the Agreement by this Amendment (this "Amendment").

Accordingly, the parties agree as follows:—

1. Amendment of the Agreement

Upon execution of this Amendment by both parties, the Agreement shall be and hereby is amended to add the 1994 ISDA Credit Support Annex attached hereto as Annex A (the "Annex") as part of the Schedule and a Credit Support Document with respect to each party.

As used in the Agreement (including any Confirmation relating thereto), as amended by this Amendment, the terms "ISDA Master Agreement" *, "this Master Agreement" *, "Agreement", "this Agreement", "herein", "hereinafter", "hereof ", "hereto" and other words of similar import shall mean the Agreement as amended hereby, unless the context otherwise specifically requires.

2. Representations

Each party represents to the other party that all representations contained in the Agreement (including all representations set forth in the Annex) are true and accurate as of the date of this Amendment and that such representations are deemed to be given or repeated by each party, as the case may be, on the date of this Amendment.

* Insert appropriate title of existing 1987 or 1992 ISDA Master Agreement.

¹ **PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISORS AND ANY OTHER ADVISOR THEY DEEM APPROPRIATE PRIOR TO USING THIS FORM OF AMENDMET. BECAUSE OF THE VARIED DOCUMENTATION STRUCTURES IN THE MARKETPLACE, MODIFICATIONS TO THIS FORM OF AMENDMENT MAY BE NECESSARY OR AN ENTIRELY DIFFERENT FORM OF AMENDMENT MAY BE APPROPRIATE.**

3. Miscellaneous

(a) **Definitions.** Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings specified for such terms in the Agreement.

(b) **Entire Agreement.** This Amendment constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.

(c) **Counterparts.** This Amendment may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(d) **Headings.** The headings used in this Amendment are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.

(e) **Governing Law.** This Amendment will be governed by and construed in accordance with English law/the laws of the State of New York (without reference to choice of law doctrine).*

IN WITNESS WHEREOF the parties have executed this Amendment on the respective dates specified below with effect from the date specified on the first page of this Amendment.

.....
(Name of Party)

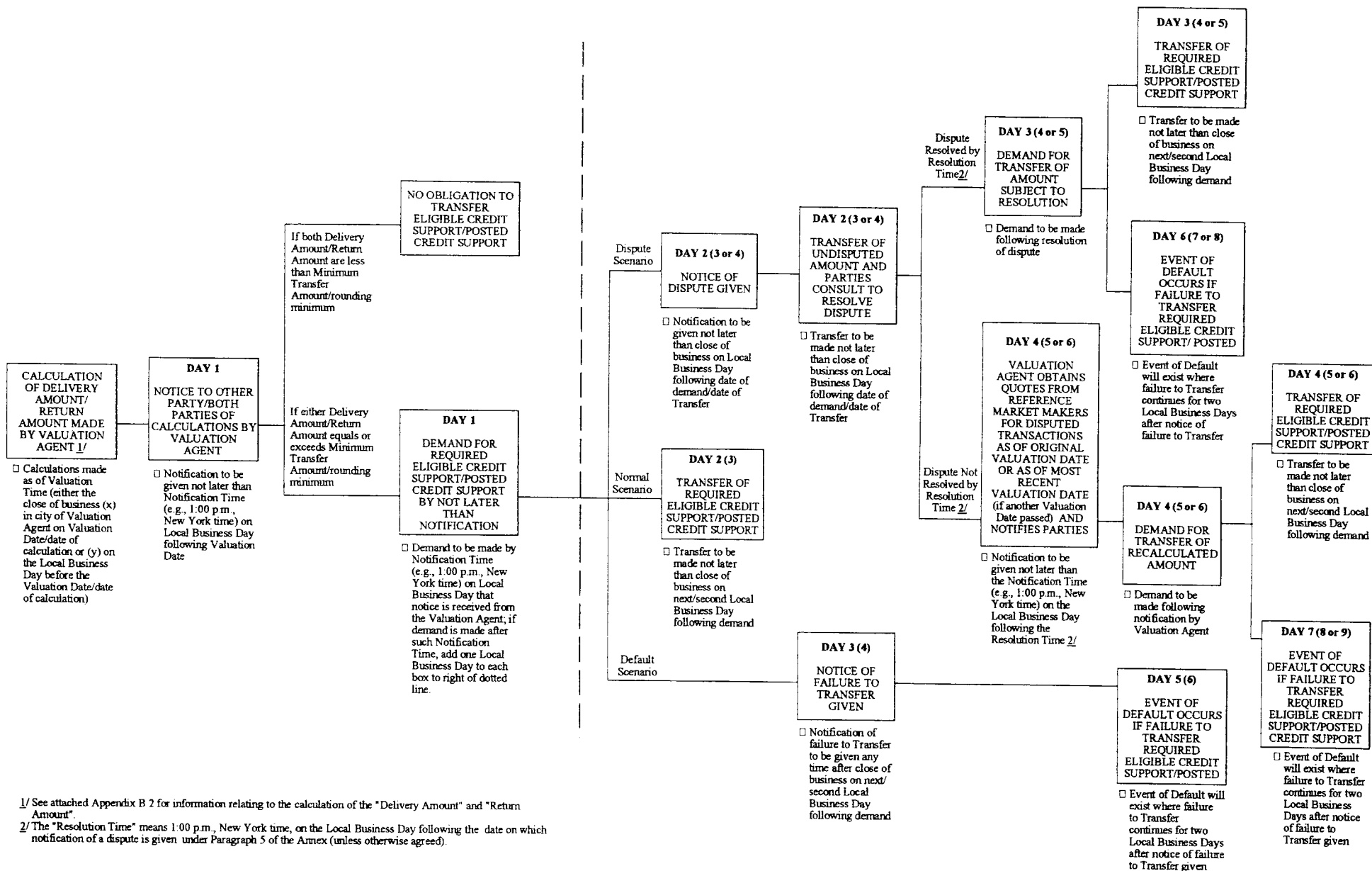
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(Name of Party)

By:
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Name:
Title:
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* Delete as applicable.

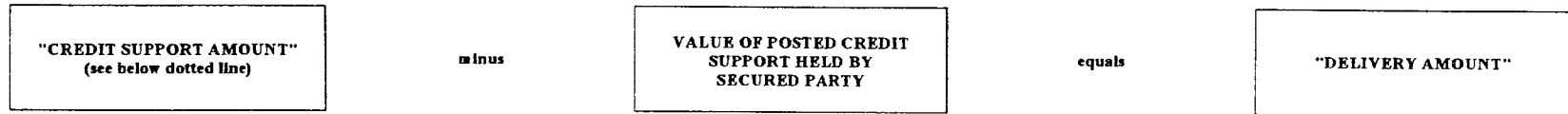
**ILLUSTRATION OF THE COLLATERALIZATION PROCESS
UNDER THE 1994 ISDA CREDIT SUPPORT ANNEX**



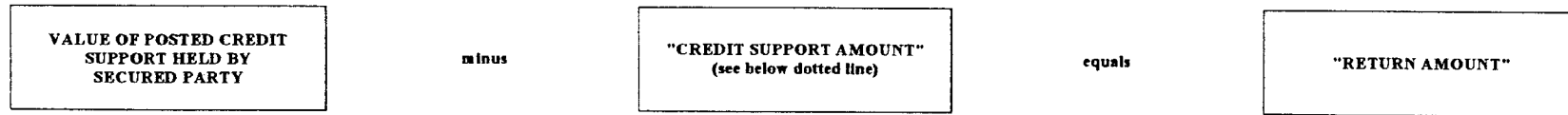
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**ELEMENTS OF CREDIT SUPPORT OBLIGATIONS
UNDER THE 1994 ISDA CREDIT SUPPORT ANNEX**

"DELIVERY AMOUNT"



"RETURN AMOUNT"



"CREDIT SUPPORT AMOUNT"



(DEEMED TO BE ZERO WHENEVER CALCULATION YIELDS A NUMBER LESS THAN ZERO)

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MODIFICATIONS TO ELIMINATE OFFSET OF INDEPENDENT AMOUNTS

Some parties may wish to (i) modify the Credit Support Amount formula to eliminate the subtraction of Independent Amounts applicable to the Secured Party as a Pledgor from the calculation of Credit Support Amount (see clause (iii) of the definition of "Credit Support Amount") and (ii) add a provision to Paragraph 3 of the Annex which prohibits offset, so that parties can be fully secured both with respect to their Exposure and in connection with any Independent Amounts applicable to their counterparty. This approach may result in each party's holding Posted Credit Support as a Secured Party simultaneously. For example, one party may hold Posted Credit Support as security for the Independent Amounts applicable to the other party and the other party may hold Posted Credit Support because its Exposure to the first party has given rise to a demand for a Delivery Amount. Parties wishing to achieve this result should add the following provisions to Paragraph 13 (under subparagraphs (b) and (m), as appropriate):

"Credit Support Amount" means, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) the Pledgor's Threshold; provided, however, that (x) in the case where the sum of the Independent Amounts applicable to the Pledgor exceeds zero, the Credit Support Amount will not be less than the sum of all Independent Amounts applicable to the Pledgor and (y) in all other cases, the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields an amount less than zero.

Additions to Paragraph 3. The following subparagraph (c) is hereby added to Paragraph 3 of this Annex:

(c) **No offset.** On any Valuation Date, if either (i) each party is required to make a Transfer under Paragraph 3(a) or (ii) each party is required to make a Transfer under Paragraph 3(b), then the amounts of those obligations will not offset each other.

The prohibition against offset contained in Paragraph 3(c) is intended to clarify that a credit support obligation in favor of a party, as Secured Party, is not to be offset against a credit support obligation arising in connection with an Independent Amount applicable to that same party, as Pledgor. The following example illustrates this prohibition against offset:

If on or promptly following a Valuation Date--

- (i) Party A Transfers \$10 to Party B in connection with an Independent Amount applicable to it as a Pledgor; and
- (ii) Party B Transfers \$50 to Party A pursuant to the amount of Party A's Exposure; and

on a subsequent Valuation Date-

- (iii) the Value of Posted Credit Support held by Party B has decreased to \$9; and
- (iv) the Exposure of Party A has increased to \$70; then,

if the offset of these obligations--

- (a) was permitted, there would exist only one credit support obligation of Party B to Transfer \$19 to Party A (thereby leaving each of Party A and Party B undersecured by \$1).
- (b) was not permitted, there would exist one credit support obligation of Party B to Transfer \$20 to Party A and one credit support obligation of Party A to Transfer \$1 to Party B (thereby leaving each of Party A and Party B fully secured).

EXAMPLE USE OF THRESHOLD

The following example demonstrates one method by which a "Threshold" may be utilized:

The Threshold for Party A and Party B may be set as follows (with a specification that the Threshold applicable to either party on any particular day will be as indicated opposite the lowest (or highest) of the ratings indicated):

<u>Senior Unsecured Debt Ratings</u>		<u>Threshold</u>
<u>Moody's Investors Service, Inc.</u>	<u>Standard & Poor's Corporation</u>	
[Rating]	[Rating]	[\$ /Infinity]

Using this credit ratings approach for "Threshold", if "infinity" were specified as the relevant Threshold at a particular ratings level for a party, then that party would not be obligated to deliver Eligible Credit Support until rated below that level.

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**EXAMPLE USES OF MINIMUM TRANSFER AMOUNT
AND THE ROUNDING VARIABLE**

The following examples demonstrate the use of "Minimum Transfer Amount" and the rounding variable:

Minimum Transfer Amount

The Minimum Transfer Amount for Party A and Party B may be set as follows (with a specification that the Minimum Transfer Amount applicable to either party on any particular day will be as indicated opposite the lowest (or highest) of the ratings indicated):

<u>Senior Unsecured Debt Ratings</u>		<u>Minimum Threshold Amount</u>
<u>Moody's Investors Service, Inc.</u>	<u>Standard & Poor's Corporation</u>	
[Rating]	[Rating]	[\$]

Using this credit ratings approach for "Minimum Transfer Amount", parties are able to set the amount of Eligible Credit Support required to be delivered by a party to vary depending upon the credit rating of that party. Once the Minimum Transfer Amount applicable to a party at a particular ratings level is reached, that party is obligated to deliver the full amount of Eligible Credit Support required,

Because the use of a Minimum Transfer Amount only establishes a "floor", it does not eliminate the possibility that parties will be required to deliver uneven amounts of Eligible or Posted Collateral. As discussed in the next section, parties must establish a rounding convention to eliminate such requirements. Additionally, as discussed below, parties can use rounding as a substitute for a Minimum Transfer Amount.

Rounding

Market participants may use a rounding convention as an alternative to a Minimum Transfer Amount. For example, the parties could specify that (i) Delivery Amounts and Return Amounts below a specified level would be rounded down to zero and (ii) Delivery Amounts above that level would be rounded up and Return Amounts above that level would be rounded down, in each case to the nearest integral multiple specified by the parties. (As discussed above in Section II.B.6.d of this Guide, parties would not ordinarily be expected to specify that both Delivery Amounts and Return Amounts are to be rounded up, as this could create conflicting obligations to Transfer collateral and result in a Secured Party being undersecured.) In this way, market participants obtain the same "minimum" that using a Minimum Transfer Amount would provide, but avoid having to specify a separate rounding convention to eliminate uneven Delivery Amounts or Return Amounts.

Assume that each party is willing to be unsecured for up to \$10 of Exposure (or additional Exposure above the amount of Posted Credit Support held by the Secured Party) and to allow the other party to be oversecured for the first \$10 of any decline in Exposure, but that each party wishes to round all Delivery Amounts above that level up to the nearest \$5 and round all Return Amounts above that level down to the nearest \$5. Parties may achieve this result by completing the rounding variable in Paragraph 13(b)(iv)(D) as follows:

Delivery Amount and Return Amount: (a) all Delivery Amounts and Return Amounts that are less than \$10 will be rounded down to zero, (b) all Delivery Amounts above \$10 will be rounded up to the nearest multiple of \$5 and (c) all Return Amounts above \$10 will be rounded down to the nearest multiple of \$5.

Unlike using the Minimum Transfer Amount alternative, which may result in calls for Eligible Credit Support or Posted Credit Support in amounts of \$10, \$11, \$12, etc., the rounding convention results in movements only in amounts of \$10, \$15, \$20, etc., thus simplifying the collateralization process operationally.

**SPECIAL REPRESENTATION FOR PARTIES DEALING WITH A
U.S. BANK OR THRIFT INSTITUTION**

A party dealing with a U.S. bank or thrift institution subject to the FDIA should consider including in Paragraph 13(i) the following additional representation from such institution:

The necessary action to authorize referred to in Section 3(a)(ii) of this Agreement includes all authorizations required under the Federal Deposit Insurance Act as amended (including amendments effected by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) and under any agreement, writ, decree or order entered into with the Pledgor's supervisory authorities; and at all times during the term of this Agreement, the Pledgor will continuously include and maintain as part of its official written books and records this Agreement, any Credit Support Document to which it is a party and all other exhibits, supplements and attachments hereto and documents incorporated by reference herein, including all Confirmations, and evidence of all necessary authorizations. This Agreement, any Credit Support Document to which the Pledgor is a party, each Confirmation, and any other documentation relating to this Agreement to which it is a party or that it is required to deliver will be executed and delivered by a duly appointed or elected and authorized officer of the Pledgor of the level of vice-president or higher. The Pledgor and the Secured Party agree that each Transaction and the Agreement are a "swap agreement" and a "qualified financial contract" and that the Agreement is a "master agreement", for purposes of Section 11(e)(8) of the Federal Deposit Insurance Act or any successor provisions.

This representation is intended to address concerns raised by Section 13(e) of the FDIA. 1/ Section 13(e) of the FDIA sets forth certain requirements for a party to hold a valid security interest against the Federal Deposit Insurance Corporation (the "FDIC") in any assets that the FDIC acquires from an insured depository institution, either through security for a loan, purchase from or as receiver for that institution. 2/

In 1989, the Board of Directors of the FDIC issued the Statement of Policy on Qualified Financial Contracts (the "FDIC Policy Statement") to provide a "safe harbor" from Section 13(e) for certain bona fide qualified financial contracts entered into by depository institutions and nonaffiliated counterparties. The FDIC Policy Statement states that any qualified financial contract (including any ancillary agreement, such as a master agreement or security arrangements) that complies with each of the following criteria will be deemed to satisfy, in pertinent part, the requirements of Section 13(e) of the FDIA:

"1. The qualified financial contract is evidenced by a writing (including a confirmation) that either is sent by the depository institution to the counterparty or by the counterparty to the depository institution. In either case, the writing must be sent reasonably contemporaneously with the parties' agreement to enter into the specific qualified financial contract. The writing need not be signed unless otherwise required by applicable noninsolvency law.

2. The depository institution, by corporate action, was authorized under applicable noninsolvency law to enter into the qualified financial contract. A depository institution will be deemed to have taken such corporate action if the counterparty has relied in good faith either on a resolution (or extract thereof) provided by the institution's corporate secretary or assistant secretary or on a written representation (whether in a master agreement or otherwise) from an officer of the level of vice president or higher as to the depository institution's authority.

1/ 12 U.S.C. § 1823(e) (1992).

2/ Id.

3. The writing (or a copy thereof) evidencing the qualified financial contract and the evidence of authority must be maintained by the depository institution in its official books and records. However, the counterparty may by appropriate evidence (including the production of copies maintained by the counterparty) establish the existence of the writing and the evidence of authority."

The additional representation set forth above is intended to identify this issue so that counterparties entering into security arrangements (*e.g.*, such as the Annex) with U.S. insured depository institutions are aware of Section 13(e) of the FDIA and the requirements imposed by it. For a more detailed analysis of the issues surrounding Section 13(e) of the FDIA, *see* the memoranda prepared by Cravath, Swaine & Moore for ISDA dated February 18, 1993, entitled "U.S. Bank Pledges of Collateral: FDIC Policy Statement and FDIC Advisory Opinion" and April 14, 1993, entitled "U.S. Bank Pledges of Collateral: FDIC Statement of Policy Regarding Treatment of Security Interests" (both of which are available to ISDA members from the executive offices of ISDA).

**MODIFICATIONS FOR
1987 ISDA MASTER AGREEMENT USERS**

Parties to a 1987 ISDA Master Agreement may wish to include, among other things, the following technical modifications:

Definition of Local Business Day. The 1992 ISDA Master Agreements use the term "Local Business Day" to identify days on which payments, deliveries, notices and other actions are to be Performed--throughout the Annex this defined term is used. Both versions of the 1987 ISDA Master Agreements, however, include the defined term "Business Day", rather than "Local Business Day", and include slight differences in the definition of the term. As a result, parties using either 1987 ISDA Master Agreement will need to select one of the following provisions to change the references in the Annex from "Local Business Day" to "Business Day":

(i) **1987 ISDA Interest Rate Swap Agreement:** All references to "Local Business Day" in this Annex have the meaning specified for the term "Business Day" for purposes of this Agreement. ^{1/}

(ii) **1987 ISDA Interest Rate and Currency Exchange Agreement:** All references to "Local Business Day" in this Annex have the meaning specified for the term "Business Day" in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

Definition of Exposure. Because of differences in the drafting (but not the substance) of the termination payments provisions in the various ISDA Master Agreements, slight changes to the definition of Exposure are necessary for parties wishing to use a 1987 ISDA Master Agreement:

(i) **1987 Interest Rate Swap Agreement:** The definition of "Exposure" in this Annex is modified to change the reference to Section 6(e)(ii)(2)(A) to be a reference to Section 6(e)(i)(2), on the basis that there are two Affected Parties and that Market Quotation will be used.

(ii) **1987 ISDA Interest Rate and Currency Exchange Agreement:** The definition of "Exposure" in this Annex is modified to change the reference to Section 6(e)(ii)(2)(A) to be a reference to Section 6(e)(ii), with the determination of "Settlement Amount" to be made on the basis of paragraph (a) thereof.

^{1/} The definition of this term is contained in the 1986 Code of Standard Wording, Assumptions and Provisions for Swaps. Parties using this form may also wish to consider adding a reference to days on which foreign exchange markets are open.

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